

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE GRAND JURY

---000---

PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
PLAINTIFFS,)	INDICTMENT
)	
V.)	NO. 211045
)	
RONALD R. GONZALES,)	
JOSEPH AUGUST GUERRA III, AND)	
NORCAL WASTE SYSTEMS, INC.,)	
)	
DEFENDANTS.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SAN JOSE, CALIFORNIA

VOLUME 8
PAGES 1219-1400
APRIL 12, 2006
APRIL 13, 2006

---000---

APPEARANCES:

FOR THE PEOPLE:	JULIUS FINKELSTEIN DEPUTY DISTRICT ATTORNEY
	JAMES GIBBONS-SHAPIRO DEPUTY DISTRICT ATTORNEY
OFFICIAL COURT REPORTER:	SUE HERFURTH, C. S. R. LICENSE NO. 9645 SUE HERFURTH, CSR #9645

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I N D E X

W I T N E S S

P A G E

V O L U M E 8

CINDY CHAVEZ (CONT' D)	1222
CHARLES REED	1287
PAUL ROTTENBERG	1314

EXHIBIT LIST

99	1236
100	1272
101	1334
102	1340
103	1386
104	1390

---000---

1 SAN JOSE, CALIFORNIA

APRIL 12, 2006

2

3

PROCEEDINGS:

4

THE FOREPERSON: MR. (NAME REDACTED) IS STILL OUT
5 OF TOWN. ALL OTHER GRAND JURORS ARE PRESENT.

6

7

I WAS AUTHORIZED TO ADVISE YOU THAT THE GOOD NEWS
8 IS THAT THERE'S ONLY ABOUT 25 MINUTES OF COUNCIL MEETING DVD
9 THAT WE NEED TO WATCH. THE BAD NEWS IS THERE IS STILL 25
10 MINUTES OF THE COUNCIL MEETING TO WATCH. I'M ASSURED THAT'S
11 THE END, PROBABLY, OF THE VIDEOS THAT WE WILL NEED TO SEE.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

MR. FINKELSTEIN: THE WITNESS IS OUTSIDE, BUT
BEFORE I BRING HER IN I WANT TO TELL THE JURY, AS IN THE
CASE OF THE OTHER VIDEO WE WATCHED, PLEASE BEAR IN MIND WHAT
PEOPLE SAY OUTSIDE THIS GRAND JURY ROOM NOT UNDER OATH IS
WHAT WE CALL HEARSAY, AND YOU CAN CONSIDER THIS ONLY FOR THE
PURPOSE OF DETERMINING WHAT PEOPLE SAID, OR IN SOME CASES
WHAT THEY DIDN'T SAY, IN VARIOUS CONTEXTS, BUT IT CANNOT BE
CONSIDERED AS EVIDENCE THAT ANY OF THE THINGS THAT PEOPLE
SAY ARE NECESSARILY TRUE. AND THAT WOULD ALSO APPLY TO A
NUMBER OF DOCUMENTS AND LETTERS AND SO FORTH THAT WE HAVE
INTRODUCED DURING THE COURSE OF THIS HEARING. THEY ARE
THERE TO SHOW WHAT PEOPLE SAID AND WHAT THEIR RESPONSE WAS,
BUT IT'S ALL HEARSAY AND THEREFORE CANNOT BE CONSIDERED AS
EVIDENCE THAT WHAT SOMEONE SAID IN A LETTER WAS TRUE, ONLY
THAT'S WHAT THEY SAID. THAT'S WHAT THEY CLAIM, AND THAT'S
WHAT THE PERSON SAID IN RESPONSE.

THERE ARE SOME EXCEPTIONS THAT MAY APPLY, AND I
Page 3

28 WILL TALK ABOUT THAT LATER, BUT GENERALLY SPEAKING, IF IT'S

SUE HERFURTH, CSR #9645

1222

1 NOT SAID FROM THE WITNESS STAND, YOU SHOULD ASSUME IT'S
2 HEARSAY AND SHOULD NOT BE CONSIDERED BY YOU FOR THE TRUTH,
3 ONLY AS EVIDENCE OF WHAT THEY SAID. SO, JUST VERY BRIEFLY,
4 IF THIS WAS A CASE ABOUT WHETHER A CONTRACT EXISTED, THEN WE
5 WOULD HEAR EVIDENCE OF SOMEONE SAID, YOU PAY ME A THOUSAND
6 DOLLARS, ANOTHER PERSON SAID, I'LL PAINT YOUR HOUSE. THAT
7 DOESN'T PROVE THEY PAINTED THE HOUSE, JUST THAT THEY AGREED
8 TO PAINT THE HOUSE. ANY QUESTIONS ABOUT THAT? VERY GOOD.

9 LET ME HAVE THE WITNESS STEP BACK IN AND WE'LL
10 RESUME.

11 CINDY CHAVEZ,
12 HAVING BEEN PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

13 EXAMINATION:

14 BY MR. FINKELSTEIN:

15 Q. COUNCILMEMBER CHAVEZ, I'LL JUST CAUTION YOU, HAVING
16 BEEN PREVIOUSLY SWORN IN THIS INVESTIGATION, YOU'RE STILL
17 UNDER OATH. DO YOU UNDERSTAND?

18 A. I DO.

19 Q. I THINK WE HAVE ABOUT 25, 30 MINUTES LEFT OF THE
20 VIDEO; I WOULD LIKE TO COMPLETE THAT. HOPEFULLY, THAT WILL
21 BE THE END OF WATCHING VIDEOS OF COUNCIL MEETINGS, AT LEAST
22 FOR YOUR TESTIMONY. WHY DON'T I RESUME THE VIDEO. I MADE
23 NOTES OF WHERE WE LEFT OFF AND I THINK WE'RE AT THE RIGHT
24 PLACE.

25 (PLAYING VIDEO.)

26 BY MR. FINKELSTEIN:

27 Q. WE JUST HEARD A REPRESENTATIVE OF WASTE MANAGEMENT,
28 ONE OF THE CURRENT PROVIDERS, EXPRESS CONCERNS ABOUT

SUE HERFURTH, CSR #9645

1223

1 NORCAL'S ABILITY TO DELIVER AT THE PRICE QUOTED IN THEIR
2 PROPOSAL, CORRECT?

3 A. CORRECT.

4 Q. AND THE PERSON ALSO URGED THE COUNCIL TO HOLD
5 NORCAL TO THE PRICES IT QUOTED IN ITS PROPOSAL, CORRECT?

6 A. THAT'S CORRECT.

7 (PLAYING VIDEO.)

8 BY MR. FINKELSTEIN:

9 Q. OKAY. WE'VE JUST CONCLUDED WATCHING THE VIDEO OF
10 THE OCTOBER 10 COUNCIL MEETING CONCERNING THE SELECTION OF
11 HAULERS UNDER THE RFPS THAT ISSUED EARLIER THAT YEAR,
12 CORRECT?

13 A. THAT'S CORRECT.

14 Q. WE'VE HEARD THE MAYOR COMMENT SEVERAL TIMES AS WELL
15 AS NUMBER OF COUNCIL MEMBERS, AND YOURSELF INCLUDED, RIGHT?

16 A. THAT'S CORRECT.

17 Q. WE'VE ALSO HEARD REPRESENTATIVES FROM NORCAL;
18 MICHAEL SANGIACOMO AND BILL JONES, CORRECT?

19 A. CORRECT.

20 Q. I WANT TO ASK YOU SOME QUESTIONS ABOUT WHAT WAS AND
21 WHAT WASN'T SAID IN THIS COUNCIL MEETING DID THE MAYOR OR
22 NORCAL SAY ANYTHING AT THE COUNCIL VOTE ABOUT ANY PROMISES
23 OR REPRESENTATIONS THAT MAY HAVE BEEN MADE TO NORCAL OR CWS?

24 A. NO.

25 Q. DID THE MAYOR OR NORCAL SAY ANYTHING AT THE COUNCIL
26 VOTE ABOUT THE MAYOR DIRECTING NORCAL OR CWS TO USE THE
27 TEAMSTERS?

28 A. NO.

SUE HERFURTH, CSR #9645

1224

1 Q. DID THE MAYOR OR NORCAL SAY ANYTHING AT THE COUNCIL
2 VOTE ABOUT THE CITY NEEDING TO REIMBURSE NORCAL OR CWS FOR
3 ADDITIONAL LABOR COSTS NOT REFLECTED IN THE NORCAL PROPOSAL?

4 A. NO.

5 Q. THAT INFORMATION I JUST ASKED YOU ABOUT, WOULD THAT
6 HAVE BEEN INFORMATION THAT WOULD HAVE BEEN IMPORTANT TO YOU
7 AS A COUNCILMEMBER BEFORE CASTING YOUR VOTE ON THIS ISSUE?

8 A. YES.

9 Q. WHY IS THAT?

10 A. WELL, MY FIRST MEMO ON THIS ITEM CAME BEFORE
11 ACTUALLY THIS MEETING AND IT WAS AT A MEETING WE HAD PRIOR
12 TO THIS, AND THE AREAS I WAS MOST CONCERNED ABOUT WAS WORKER
13 RETENTION, LABOR PEACE, LOCAL PREFERENCE. AND GIVEN HOW
14 MANY PEOPLE CAME FORWARD AND SPOKE ABOUT THERE BEING
15 CONCERNS OR PROBLEMS, I WOULD HAVE WANTED TO KNOW WHETHER OR
16 NOT THESE CONCERNS OR PROBLEMS WERE ACTUALLY BEING
17 ADDRESSED, AND IF SO, HOW.

18 Q. WE HEARD A NUMBER OF PEOPLE REITERATE THEIR DESIRE,
19 A NUMBER OF COUNCILMEMBERS REITERATE THEIR DESIRE THAT THE
20 CITY AUDITOR LOOK CAREFULLY AT THE FINANCIAL ASPECTS OF
21 NORCAL' S PROPOSAL, CORRECT?

22 A. THAT' S CORRECT.

23 Q. AND WOULD YOU EXPECT THAT AN ADDITIONAL 10 MILLION
24 DOLLAR LIABILITY THAT NORCAL HAD UNDERTAKEN AFTER SUBMITTING
25 ITS PROPOSAL BEFORE THE COUNCIL VOTE WOULD HAVE BEEN
26 INFORMATION THAT YOU WOULD HAVE WANTED, ALONG WITH THE CITY
27 AUDITOR, TO KNOW ABOUT?

28 A. YES.

SUE HERFURTH, CSR #9645

1225

1 Q. DID YOU RECEIVE THAT INFORMATION?

2 A. WELL, THE AUDIT SHOWED --

3 Q. I MEAN AT THIS VOTE.

4 A. NO.

5 Q. OR PRIOR TO THE VOTE?

6 A. NO.

7 Q. AND YOU STARTED TO SAY SOMETHING ABOUT THE AUDIT.
8 DID THE AUDIT SHOW ANY ADDITIONAL LIABILITY UNDERTAKEN BY
9 NORCAL TO REIMBURSE CWS FOR EXTRA LABOR COSTS?

10 A. NO.

11 Q. NOW, PRIOR TO THIS VOTE, DID YOU SPEAK WITH ANY
12 REPRESENTATIVES OF NORCAL CONCERNING NORCAL' S PROPOSAL?

13 A. YES.

14 Q. AND DO YOU REMEMBER WHO AND WHEN AND WHERE THAT
15 TOOK PLACE?

16 A. I KNOW WE TALKED ABOUT THIS WHEN I WAS HERE LAST,
17 SO I' M ASSUMING, I RECALL THAT MOST OF THOSE WERE PROBABLY,
18 OR ALL OF THEM WERE PROBABLY IN MY OFFICE, AND I BELIEVE I
19 MET WITH ALMOST EVERYONE WHO CAME BEFORE US, FROM A

20 COMPANY PERSPECTIVE.

21 Q. DO YOU REMEMBER YOU MET WITH BILL JONES OR MICHAEL
22 SANGI ACOMO?

23 A. I DON' T REMEMBER MEETING WITH MIKE, BUT I DO
24 REMEMBER BILL JONES.

25 Q. DID HE OR ANYONE ELSE FROM NORCAL PRIOR TO THE VOTE
26 IN MEETINGS WITH YOU EVER SAY ANYTHING ABOUT PROMISES OR
27 REPRESENTATIONS THAT MAY HAVE BEEN MADE TO NORCAL OR CWS?

28 A. NO.

SUE HERFURTH, CSR #9645

1226

1 Q. DID NORCAL SAY ANYTHING PRIOR TO THE COUNCIL VOTE
2 TO YOU ABOUT THE MAYOR DIRECTING NORCAL OR CWS TO USE
3 TEAMSTERS?

4 A. NO.

5 Q. DID NORCAL SAY ANYTHING PRIOR TO THE COUNCIL VOTE
6 ABOUT THE CITY NEEDING TO REIMBURSE NORCAL OR CWS FOR
7 ADDITIONAL LABOR COSTS NOT REFLECTED IN THE NORCAL PROPOSAL?

8 A. NO.

9 Q. WHAT DID NORCAL TELL YOU PRIOR TO THE COUNCIL VOTE?

10 A. UH -- I DON' T REMEMBER SPECIFICALLY, BUT I REMEMBER
11 THAT EVERYONE WHO CAME BEFORE US TALKED ABOUT WHY THEIR BID
12 WAS THE RIGHT ONE, WHY SOMEONE ELSE' S BID WAS NOT. PEOPLE
13 WERE MORE REPRESENTING THEMSELVES IN TERMS OF WHY THEY WERE
14 THE ONES TO CHOOSE OR WHY NOT TO CHOOSE SOMEONE ELSE.

15 Q. ALL RIGHT. NOW, I NOTICE IT' S ALMOST 11:00
16 O' CLOCK; MAYBE WE SHOULD TAKE A FIVE-MINUTE RECESS.

17 THE FOREPERSON: LET' S RECESS FOR FIVE MINUTES. I

18 WOULD REMIND YOU OF THE CONFIDENTIALITY ADMONITION.

19 THE WITNESS: THANK YOU.

20 (A BRIEF RECESS WAS TAKEN.)

21 THE FOREPERSON: COULD WE COME BACK TO ORDER.

22 BY MR. FINKELSTEIN:

23 Q. FOLLOWING THE OCTOBER 10 COUNCIL MEETING, AN AUDIT
24 REPORT CAME BACK FROM THE CITY AUDITOR?

25 A. CORRECT.

26 Q. WAS THERE ANYTHING IN THE AUDIT REPORT THAT
27 DISCLOSED ANYTHING ABOUT THIS ADDITIONAL LIABILITY THAT
28 NORCAL HAD UNDERTAKEN TO REIMBURSE CWS FOR THESE EXTRA LABOR

SUE HERFURTH, CSR #9645

1227

1 COSTS NOT INCLUDED IN THEIR PROPOSAL?

2 A. NO.

3 Q. THEN THERE WAS A SECOND COUNCIL VOTE ON DECEMBER
4 12, I BELIEVE; IS THAT CORRECT?

5 A. AROUND THERE, YES.

6 Q. AND PRIOR TO THAT SECOND COUNCIL VOTE, THERE WAS A
7 SECOND MEMO FROM THE MAYOR'S OFFICE, CORRECT?

8 A. I DO NOT RECALL IT BUT -- NO, I DON'T RECALL IT.

9 Q. OKAY. DO YOU RECALL THAT THERE WAS A SECOND
10 COUNCIL VOTE IN DECEMBER 2000, CORRECT?

11 A. APPROXIMATELY.

12 Q. DO YOU RECALL WHAT ACTIONS THE CITY COUNCIL TOOK ON
13 NORCAL'S PROPOSAL AT THE DECEMBER CITY COUNCIL MEETING?

14 A. I DON'T RECALL THE EXACT ACTIONS, NO.

15 Q. OKAY. LET ME SEE IF I CAN ASSIST YOU.

16 LET ME SHOW YOU EXHIBIT 22, WHICH IS A CERTIFIED
17 COPY OF THE MINUTES OF THE CITY COUNCIL FOR THURSDAY,
18 DECEMBER 12, 2000.

19 A. THANK YOU.

20 Q. WHY DON'T YOU TAKE A MOMENT AND LOOK AT THOSE
21 MINUTES AND SEE IF IT REFRESHES YOUR MEMORY.

22 A. DO YOU KNOW THE ITEM NUMBER FROM THE DAY?

23 Q. IT'S USUALLY AROUND SEVEN OR NINE, SOMEWHERE AROUND
24 THERE. WOULD YOU LIKE ME TO TRY TO LOCATE IT FOR YOU?

25 A. SORRY. I'M STILL LOOKING.

26 Q. WAS I RIGHT ABOUT THE DATE, DECEMBER 12?

27 A. YES, YOU WERE CORRECT.

28 Q. OKAY. YOU WERE PRESENT, RIGHT?

SUE HERFURTH, CSR #9645

1228

1 A. YES.

2 Q. AND A VOTE WAS TAKEN ON THE NORCAL PROPOSAL,
3 CORRECT?

4 A. CORRECT.

5 Q. AND WHAT ACTION DID THE CITY COUNCIL TAKE ON
6 NORCAL'S PROPOSAL AT THE DECEMBER 12, 2000 COUNCIL MEETING?

7 A. WE ACCEPTED THE REPORTS RELATED TO POTENTIAL
8 SERVICE ENHANCEMENT REVENUE OR COSTS FOR RECYCLE PLUS
9 PROGRAM, THE ACCEPTANCE OF THE REPORT ON LABOR PEACE ISSUES
10 RELATE TO THE RECYCLE PLUS PROGRAM, AND ACCEPTANCE OF THE
11 REPORT FROM THE CITY AUDITOR ON THE REVIEW OF THE AUDIT, AND
12 AUTHORIZATION FOR THE CITY MANAGER TO NEGOTIATE --

13 Q. SO BASICALLY THE PROPOSAL WAS ACCEPTED AND STAFF

14 WAS DIRECTED TO NEGOTIATE THE CONTRACT WITH NORCAL?

15 A. CORRECT.

16 Q. AT THIS MEETING AT THIS COUNCIL MEETING ON DECEMBER
17 12, DID THE MAYOR OR NORCAL SAY ANYTHING ABOUT ANY PROMISES
18 OR REPRESENTATIONS THEY MADE TO NORCAL OR CWS?

19 A. NO.

20 Q. DID THE MAYOR OR NORCAL SAY ANYTHING AT THE COUNCIL
21 VOTE ABOUT THE MAYOR DIRECTING NORCAL OR CWS TO USE THE
22 TEAMSTERS?

23 A. NO.

24 Q. DID THE MAYOR OR NORCAL SAY ANTHING AT THIS COUNCIL
25 VOTE ON DECEMBER 12 ABOUT THE CITY NEEDING TO REIMBURSE
26 NORCAL OR CWS FOR ADDITIONAL LABOR COSTS NOT REFLECTED IN
27 THE NORCAL PROPOSAL?

28 A. NO.

SUE HERFURTH, CSR #9645

1229

1 Q. IS THAT INFORMATION THAT YOU WOULD HAVE WANTED TO
2 HAVE BEFORE CASTING YOUR VOTE ON DECEMBER 12 IN FAVOR OF THE
3 NORCAL PROPOSAL?

4 A. YES.

5 Q. AND FOR THE SAME REASONS YOU EXPRESSED BEFORE?

6 A. YES. THESE WERE ISSUES I WAS CONCERNED ABOUT, I
7 WAS VERY WORRIED, AS YOU HEARD ON THE TAPE EARLIER, ABOUT
8 HOW THE WORKERS WERE GOING TO BE TREATED IRRESPECTIVE OF THE
9 UNION REPRESENTING THEM OR IF THEY WOULD BE AT ALL.

10 Q. BEFORE THIS SECOND VOTE ON DECEMBER 12, 2000, DID
11 YOU SPEAK WITH THE MAYOR ABOUT THESE ISSUES?

- 12 A. NOT THAT I RECALL.
- 13 Q. OKAY.
- 14 A. MAY I ASK A CLARIFYING QUESTION?
- 15 Q. YES.
- 16 A. WHEN YOU SAY THESE ISSUES, ARE YOU REFERRING TO --
- 17 Q. THE SELECTION OF NORCAL'S PROPOSAL.
- 18 A. YOU KNOW WHAT, I DON'T REMEMBER THE ANSWER TO THAT
- 19 QUESTION. I DON'T RECALL IF I DID OR DIDN'T.
- 20 Q. MAYBE I CAN ASK IT THIS WAY: DO YOU RECALL THE
- 21 MAYOR SAYING ANYTHING TO YOU PRIOR TO THE DECEMBER 12
- 22 COUNCIL VOTE ABOUT ANY PROMISES OR REPRESENTATIONS THAT HE
- 23 MAY HAVE MADE TO NORCAL OR CWS?
- 24 A. NO.
- 25 Q. DO YOU RECALL THE MAYOR SAYING ANYTHING TO YOU
- 26 PRIOR TO DECEMBER 12 VOTE ABOUT THE MAYOR DIRECTING NORCAL
- 27 OR CWS TO USE THE TEAMSTERS?
- 28 A. NO.

SUE HERFURTH, CSR #9645

1230

- 1 Q. DO YOU REMEMBER THE MAYOR SAYING ANYTHING TO YOU
- 2 PRIOR TO THE DECEMBER 12 VOTE ABOUT THE CITY NEEDING TO
- 3 REIMBURSE NORCAL OR CWS FOR ADDITIONAL LABOR COSTS?
- 4 A. NO.
- 5 Q. DID YOU SPEAK WITH NORCAL BETWEEN THE FIRST AND
- 6 SECOND VOTE, AND BY THE FIRST VOTE I MEAN OCTOBER 10, 2000,
- 7 AND THE SECOND VOTE -- DECEMBER 12, 2000?
- 8 A. I DON'T KNOW. I DON'T RECALL IF I DID OR NOT.
- 9 Q. DO YOU RECALL NORCAL SAYING ANYTHING TO YOU PRIOR

10 TO THE DECEMBER 12 COUNCIL VOTE ABOUT ANY PROMISES OR
11 REPRESENTATIONS THAT MAY HAVE BEEN MADE TO THEM?

12 A. NO.

13 Q. OR DID THEY SAY ANYTHING ABOUT BEING DIRECTED TO
14 USE THE TEAMSTERS?

15 A. NO.

16 Q. DID THEY SAY ANYTHING ABOUT THE CITY NEEDING TO
17 REIMBURSE NORCAL OR CWS FOR ADDITIONAL LABOR COSTS?

18 A. NO.

19 Q. THEN DO YOU RECALL THAT --

20 A. MAY I QUALIFY THAT? I DO WANT TO SHARE A
21 CONVERSATION, BUT I DON'T KNOW WHEN THIS OCCURRED. MY
22 RECOLLECTION IS THAT IT WOULD HAVE BEEN SOMEWHERE EARLY IN
23 THIS DISCUSSION. THAT IS THAT I WAS VERY CONCERNED ABOUT,
24 AND REMAINED CONCERNED THROUGHOUT THIS PROCESS, ABOUT THE
25 RATE OF PAY THAT THE PEOPLE AT THE MRF WERE MAKING, AND
26 ANYTIME I'M SURE I WOULD HAVE RAISED THAT WITH SOMEONE THEY
27 WOULD HAVE SAID, AND I'M SURE THIS HAPPENED IN A PUBLIC
28 MEETING, IT'S GOING TO INCREASE THE COST, SO I KNOW THAT

SUE HERFURTH, CSR #9645

1231

1 THAT'S SOMETHING THAT WOULD INCREASE THE COST OVERALL OF THE
2 PROPOSALS THAT CAME BEFORE US. SO I KNOW THAT IF I WAS NOT
3 SURE THAT PEOPLE WERE GOING TO BE PAID FAIRLY, I WOULD HAVE
4 CONTINUED TO ASK PEOPLE ABOUT THAT, WHETHER THAT WAS THE
5 MAYOR OR THE COMPANIES INVOLVED.

6 Q. LET ME SEE IF I UNDERSTAND WHAT YOU'RE TELLING US,
7 AND MAYBE YOU COULD TRY TO EXPLAIN IT A LITTLE MORE.

8 A. WHAT I MEAN IS THAT WHEN THE AUDIT CAME OUT, THE
9 AUDIT WAS FOCUSED UPON OTHER THINGS I WAS CONCERNED ABOUT,
10 LIKE THE SPLIT TRUCK. AND I DIDN'T UNDERSTAND ENTIRELY HOW
11 THAT WAS GOING TO WORK, AND IT WAS NEW.

12 AT THAT MEETING I DID SAY I WAS CONCERNED ABOUT
13 WANTING TO KNOW WHAT THE LABOR COSTS ARE, BECAUSE I WANTED
14 TO MAKE SURE WE WERE PAYING PEOPLE FAIRLY.

15 Q. I THINK WHAT YOU SAID AT THE MEETING WAS YOU WANTED
16 TO MAKE SURE THAT SAVINGS WERE NOT AT THE EXPENSE OF WAGES
17 AND BENEFITS FOR THE WORKERS.

18 A. RIGHT. AND MY ONLY COMMENT IS THOSE THINGS WERE
19 CONSISTENT FOR ME FROM WHEN I STARTED ON THIS VENTURE AS A
20 NEW COUNCILMEMBER IN 1999, EVEN PRIOR TO THE MEETING THE
21 10TH, WAS WORKER RETENTION, LABOR PEACE. I EVEN WANTED
22 LOCAL PREFERENCE. I REMAINED VERY CONCERNED ABOUT THOSE
23 ISSUES. SO I DIDN'T WANT TO DISMISS OUT OF HAND, SO I COULD
24 HAVE SAID TO SOMEONE, ARE WE SURE WE ARE TAKING CARE OF THE
25 PEOPLE BEING PAID DECENTLY. AND I WANT YOU TO UNDERSTAND
26 THAT I UNDERSTOOD THAT WOULD MEAN THERE WOULD BE AN INCREASE
27 IN COST AT SOME POINT, THAT'S THE POINT. IF THERE WAS A
28 CHANGE.

SUE HERFURTH, CSR #9645

1232

1 Q. WHO WOULD BE GETTING AN INCREASE IN COST?

2 A. THAT THERE COULD BE AN INCREASE IN COST, EITHER FOR
3 THE COMPANY OR FOR THE CITY, DEPENDING ON IF THERE WAS ANY
4 DRAMATIC CHANGE PRIOR TO US TAKING THE VOTE.

5 Q. RIGHT. BUT I GUESS WHAT WE'RE TRYING TO LOOK AT

6 HERE, TO BE A LITTLE MORE PRECISE, IS THE QUESTION OF WHO
7 SHOULD BEAR THESE EXTRA LABOR COSTS AND WHETHER THAT SHOULD,
8 INFORMATION SHOULD HAVE BEEN DISCLOSED BEFORE THE CONTRACT
9 WAS SIGNED OR, AS IT APPEARS IN THIS CASE, AFTER THE
10 CONTRACT WAS SIGNED. DO YOU UNDERSTAND THAT?

11 A. I UNDERSTAND THAT. I JUST WANTED TO TELL YOU WHAT
12 I KNEW, SO I WAS HOPING IF ANY INFORMATION I HAD WOULD BE
13 HELPFUL TO YOU.

14 Q. JUST TO CLARIFY, YOU UNDERSTAND WE'RE LOOKING AT A
15 PROCESS, THERE'S AN INITIAL COUNCIL VOTE ON OCTOBER 10,
16 2000, CORRECT?

17 A. CORRECT.

18 Q. THERE'S A REFERRAL TO THE CITY AUDITOR TO LOOK AT
19 CERTAIN ISSUES, AMONG OTHER THINGS?

20 A. RIGHT, THAT I REQUESTED.

21 Q. RIGHT. APPARENTLY, OTHERS WANTED THAT, TOO, AND
22 THEY VOTED IN FAVOR OF IT?

23 A. RIGHT.

24 Q. THERE'S A SECOND COUNCIL VOTE ON DECEMBER 12, 2000,
25 CORRECT?

26 A. CORRECT.

27 Q. STAFF'S DIRECTED TO NEGOTIATE THE WORDING OF THE
28 AGREEMENT, CORRECT?

SUE HERFURTH, CSR #9645

1233

1 A. CORRECT.

2 Q. AND AN AGREEMENT IS SIGNED ON, I THINK MARCH 27,
3 2001, OR THEREABOUTS?

4 A. CORRECT.

5 Q. TO YOUR KNOWLEDGE, THROUGHOUT THAT ENTIRE PROCESS,
6 DID ANYONE BRING TO YOUR ATTENTION OR DISCLOSE TO YOU THAT
7 THE MAYOR HAD MADE CERTAIN ASSURANCES OR PROMISES TO NORCAL
8 ABOUT NORCAL GETTING ADDITIONAL CITY COMPENSATION?

9 A. NO.

10 Q. LET ME FINISH. ADDITIONAL CITY COMPENSATION FOR
11 ADDITIONAL LABOR COSTS NECESSITATED BY SWITCHING FROM
12 LONGSHOREMEN TO TEAMSTERS?

13 A. NO.

14 Q. AND IS THAT INFORMATION YOU WOULD HAVE WANTED TO
15 KNOW ABOUT BEFORE VOTING ON WHETHER OR NOT TO ACCEPT THE
16 CONTRACT?

17 A. YES.

18 Q. SO YOU UNDERSTOOD, I TAKE IT, WHEN THE CONTRACT
19 CAME BACK FOR PROFESSIONAL APPROVAL UPON MARCH 27, 2001,
20 BEFORE THE COUNCIL, YOU UNDERSTOOD THAT ONE OF THE
21 PROVISIONS OF THE CONTRACT WOULD BE INCREASED LABOR COSTS
22 WOULD BE BORNE BY THE CONTRACTORS, NOT BY THE CITY, OTHER
23 THAN CERTAIN COST OF LIVING ADJUSTMENTS, RIGHT?

24 A. YES.

25 Q. SO LET'S MOVE FORWARD TO MAY 27, 2003. DO YOU
26 RECALL THAT THERE WAS A CITY COUNCIL VOTE ON THAT DATE ABOUT
27 RAISING THE RECYCLE PLUS RATE HIKES?

28 A. YES. GENERALLY AROUND THAT TIME.

SUE HERFURTH, CSR #9645

1234

1 Q. THERE WAS A NINE PERCENT RATE INCREASE, I BELIEVE?
Page 16

2 A. I DON'T RECALL THE EXACT AMOUNT ON THAT DATE.

3 Q. OKAY. NOW, THERE HAD BEEN THAT RATE HIKE JUST
4 PRIOR TO DECEMBER, HAD THERE NOT?

5 A. YES.

6 Q. NORMALLY, THOSE RATE HIKES ARE ONCE A YEAR AFFAIRS,
7 USUALLY AT THE END OF THE YEAR?

8 A. I DON'T KNOW WHAT THE NORMAL PRACTICE IS.

9 Q. WITH RESPECT TO THE MAY 2003 RATE HIKE, DO YOU
10 RECALL WHAT THE REASON FOR THIS RATE HIKE WAS?

11 A. I KNOW THAT AS PART OF OUR BUDGET DISCUSSIONS, AND
12 I APOLOGIZE BECAUSE THIS COULD HAVE BEEN THE RATE HIKE
13 YOU'RE REFERRING TO IN DECEMBER VERSUS MAY, BUT I KNOW THAT
14 OVERALL WE HAD A GOAL AND PLAN FOR THE CITY TO MAKE SURE
15 THAT THE SINGLE-FAMILY COLLECTIONS WERE AT FULL COST
16 RECOVERY, AND AT THAT TIME WERE THEY WERE NOT, THEY
17 SOMETHING LIKE 90 PERCENT OR 91 PERCENT, AND I REMEMBER THAT
18 BEING THE DISCUSSION, EITHER IN A BUDGET SESSION OR AT ONE
19 OF THE MEETINGS WHERE WE TALKED ABOUT THE RATE HIKE.

20 Q. LET ME SEE IF I CAN GET IT ANOTHER WAY. YOU VOTED
21 IN FAVOR OF THE NINE PERCENT RATE HIKE IN MAY OF '03?

22 A. YES.

23 Q. OKAY. ARE YOU TELLING US THAT YOUR UNDERSTANDING
24 OF THE PURPOSE OF THE RATE HIKE WAS TO INCREASE COST
25 RECOVERY FOR THAT SERVICE?

26 A. EITHER AT THE MAY MEETING OR THE DECEMBER MEETING
27 WHEN WE DID THE INITIAL RATE HIKES, YES.

28 Q. JUST TO REMIND THE JURORS, THE WAY WE UNDERSTAND

SUE HERFURTH, CSR #9645

1 THIS WORKS, THIS IS ONE OF THOSE SERVICES A PROPERTY OWNER
2 COULD BE ASSESSED TO PAY FOR, CORRECT?

3 A. CORRECT.

4 Q. TO THE EXTENT THERE IS A SHORTFALL IN REVENUE FROM
5 THE ASSESSMENT, THE SHORTFALL HAS TO BE MADE UP FROM THE
6 CITY' S GENERAL FUND?

7 A. THAT' S CORRECT, OR THERE' S EVEN ANOTHER ENTERPRISE
8 FUND, I GUESS.

9 Q. WHEN YOU VOTED FOR THE MAY 27, 2003 RATE HIKE, DID
10 YOU HAVE ANY UNDERSTANDING ABOUT THAT RATE HIKE HAVING
11 ANYTHING TO DO WITH BUILDING UP A RESERVE TO COMPENSATE
12 NORCAL FOR CWS' S INCREASED LABOR COSTS?

13 A. NO.

14 Q. DID THE MAYOR OR NORCAL SAY ANYTHING TO YOU AT OR
15 BEFORE THIS COUNCIL VOTE ABOUT ANY PROMISES OR
16 REPRESENTATIONS THAT MAY HAVE BEEN MADE TO NORCAL OR CWS?

17 A. NO.

18 Q. DID THE MAYOR OR NORCAL SAY ANYTHING AT OR BEFORE
19 THIS COUNCIL VOTE ABOUT THE MAYOR DIRECTING CWS OR NORCAL
20 TO USE THE TEAMSTERS?

21 A. NO.

22 Q. DID THE MAYOR OR NORCAL SAY ANYTHING AT THIS
23 COUNCIL VOTE OR BEFORE ABOUT THE CITY NEEDING TO REIMBURSE
24 NORCAL OR CWS FOR ADDITIONAL LABOR COSTS NOT REFLECTED IN
25 THE NORCAL PROPOSAL?

26 A. NO.

27 Q. SO, AS FAR AS YOU KNEW, AT THE TIME YOU VOTED ON
28 THE MAY 2003 NINE PERCENT RATE HIKE, THAT WAS TO SIMPLY

1 INCREASE COST RECOVERY AND REDUCE DEPENDENCE ON THE GENERAL
2 FUND?

3 A. THAT'S CORRECT.

4 Q. SO NOW LET'S JUMP AHEAD TO THE YEAR 2004. DID
5 MAYOR GONZALES RECOMMEND AMENDING THE NORCAL AGREEMENT IN A
6 MEMO TO THE CITY COUNCIL DATED SEPTEMBER 16, 2004?

7 A. I DON'T RECALL THE DATE.

8 Q. OKAY. LET ME SHOW YOU.

9 A. THAT WOULD BE GREAT. THANK YOU.

10 Q. WHY DON'T YOU LOOK AT EXHIBIT 42, AND I'M GOING TO
11 MARK AN EXHIBIT YOU -- OR MAYBE NOT. TAKE A LOOK AT THAT
12 EXHIBIT FOR US FOR A MOMENT. MAY I HAVE MARKED AS EXHIBIT
13 99 A CERTIFIED COPY OF A SEPTEMBER 16, 2004 MEMO TO THE CITY
14 COUNCIL FROM MAYOR GONZALES, VICE MAYOR DANDO AND
15 COUNCILMEMBER CHAVEZ?

16 THE FOREPERSON: SO MARKED.

17 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
18 JURY EXHIBIT 99.)

19 BY MR. FINKELSTEIN:

20 Q. SO HAVING LOOKED AT EXHIBIT 42 AND NOW EXHIBIT 99,
21 THE CERTIFIED COPY OF EXHIBIT 42, DO YOU NOW RECALL THAT
22 MAYOR GONZALES RECOMMENDED AMENDING THE NORCAL AGREEMENT IN
23 A MEMO TO THE CITY COUNCIL DATED SEPTEMBER 16, 2004?

24 A. YES.

25 Q. LET ME TAKE BACK ONE OF THOSE COPIES OF THE MEMO.
26 LET'S ALL TAKE A LOOK AT IT. DID MAYOR GONZALES SIGN THIS
27 MEMO?

28 A. I DIDN'T WATCH HIM SIGN IT.

1 Q. DO YOU RECOGNIZE HIS SIGNATURE?
2 A. THAT LOOKS LIKE HIS SIGNATURE, YEAH.
3 Q. AND DO YOU RECOGNIZE YOUR OWN SIGNATURE ON THE
4 MEMO?
5 A. YES.
6 Q. IS THAT YOUR SIGNATURE?
7 A. YES.
8 Q. DO YOU RECOGNIZE COUNCILMEMBER DANDO'S SIGNATURE?
9 A. IT LOOKS LIKE HERS, BUT I DIDN'T SEE HER SIGN IT.
10 Q. DO YOU KNOW AT WHOSE REQUEST THE MEMO WAS PREPARED?
11 A. I BELIEVE, I CAN ONLY ASSUME IT'S THE MAYOR'S
12 OFFICE.
13 Q. I DON'T WANT YOU TO MAKE ASSUMPTIONS.
14 A. THEN NO.
15 Q. DO YOU KNOW WHO ACTUALLY PREPARED THE MEMO?
16 A. I DO NOT.
17 Q. DID THE MAYOR'S MEMO INCLUDE A RECOMMENDATION THAT
18 THE CITY PAY NORCAL FOR INCREASED LABOR COSTS DUE TO CWS
19 SWITCHING FROM ILWU WORKERS TO TEAMSTERS?
20 A. YES.
21 Q. WAS THIS MEMO SUBMITTED TO THE CITY COUNCIL?
22 A. YES.
23 Q. DID IT BECOME PART OF THE OFFICIAL RECORD OF THE
24 SEPTEMBER 16, 2004 CITY COUNCIL MEETING PROCEEDINGS?
25 A. I'M NOT SURE THIS WAS ON THE 16TH. LOOKS LIKE IT
26 WAS ON THE 21ST.

27 Q. I'M SORRY, THE 21ST. SO OTHER THAN THE DATE WAS I
28 CORRECT?

SUE HERFURTH, CSR #9645

1238

1 A. YES.

2 Q. OKAY. IS THERE ANYTHING IN THIS MEMO ABOUT ANY
3 PROMISES OR REPRESENTATIONS THAT MAY HAVE BEEN MADE TO
4 NORCAL OR CWS?

5 A. NO.

6 Q. DID YOU SUPPORT THE RECOMMENDATION IN THIS MEMO?

7 A. YES.

8 Q. WHY?

9 A. FOR --

10 Q. BEFORE YOU ANSWER THAT, JUST TO BE CLEAR, JUST TO
11 ORIENT EVERYONE, THE REASON I ASKED WHY IS, YOU HAVE JUST
12 GONE THROUGH A PROCESS OF, YEARS EARLIER, TO PICK NORCAL IN
13 PART BECAUSE IT WAS THE LOWEST BIDDER, CORRECT?

14 A. CORRECT.

15 Q. THE CITY ENTERED INTO AN AGREEMENT WITH NORCAL THAT
16 SAID ANY INCREASED LABOR COST WAS NORCAL'S PROBLEM, NOT THE
17 CITY'S?

18 A. THAT'S CORRECT.

19 Q. HERE WE'RE IN 2004 AND YOU'RE SIGNING ON TO A MEMO
20 THAT RECOMMENDS THE CITY OF SAN JOSE, AND ULTIMATELY THE
21 RATEPAYERS OF SAN JOSE, SHELL OUT AN ADDITIONAL 11 MILLION
22 DOLLARS THAT DOESN'T SEEM TO BE REQUIRED. I MEAN, IT'S JUST
23 AN AGREEMENT. CAN YOU TELL US WHY YOU THOUGHT THAT WAS A
24 GOOD IDEA?

25 A. SURE. FIRST OF ALL, WHEN WE TOOK THIS VOTE THE
26 FIRST TIME TO DO A REQUEST FOR PROPOSALS FOR THIS PROCESS, I
27 WAS NERVOUS ABOUT THAT AS A NEW COUNCILMEMBER BECAUSE I HAD
28 A FEAR OF GARBAGE PILING UP ON THE STREETS AND THE

SUE HERFURTH, CSR #9645

1239

1 TRANSITION BEING A CHALLENGE.

2 I FELT AS WE MOVED FORWARD THAT WE WERE GETTING
3 GOOD CUSTOMER SERVICE, I WAS GETTING FEWER COMPLAINTS ABOUT
4 STREET SWEEPING IN PARTICULAR, BUT NOT THAT THAT WAS JUST
5 NORCAL, BUT THAT WE WERE GETTING GOOD CUSTOMER SERVICE.

6 THE OTHER IS FROM A POLICY PERSPECTIVE IT WOULD
7 NOT HAVE BEEN INCONSISTENT IN MY MIND TO PAY FOR THE
8 ADDITIONAL COSTS. AS A PROCURER OF SERVICES, AS A CITY, WE
9 PAY FOR A LIVING WAGE, AND THE CONTRACTOR DOESN'T BEAR THAT
10 RESPONSIBILITY. THE CONTRACT IS ADJUSTED TO INCORPORATE
11 WHAT THE WAGES ARE.

12 SAME WITH PREVAILING WAGE, IF WE DO A REQUEST FOR
13 QUALIFICATIONS, FOR EXAMPLE, ON A PIECE OF PROPERTY, AND
14 IT'S FROM THE REDEVELOPMENT AGENCY, THE VALUE OF THAT LAND
15 IS RELATED TO WHETHER OR NOT WHOEVER DEVELOPS IT WOULD HAVE
16 TO USE PREVAILING WAGES FOR CONSTRUCTION, FOR EXAMPLE.

17 SO FOR ME, BEING THAT I CONSIDERED PEOPLE BEING
18 PAID DECENTLY IMPORTANT AND THAT WE HAVE DONE THIS AS A
19 POLICY, I HAD TAKEN LEADERSHIP ON THOSE ISSUES, FROM A
20 POLICY PERSPECTIVE, THIS WAS NOT INCONSISTENT FOR ME, FROM
21 MY PERSPECTIVE.

22 Q. OKAY. SO THAT'S KIND OF A LONG ANSWER. LET ME ASK

23 YOU SOME FOLLOW-UP QUESTIONS ABOUT IT.

24 I SN'T IT THE CASE THAT THE CITY'S LIVING WAGE
25 POLICY DID NOT APPLY TO THE MRF WORKERS AT THE MRF FACILITY?

26 A. THAT'S CORRECT.

27 Q. IS IT NOT ALSO THE CASE THAT THE CITY'S PREVAILING
28 WAGE POLICY DID NOT APPLY TO THE MRF WORKERS AT THE MRF

SUE HERFURTH, CSR #9645

1240

1 FACILITY?

2 A. THAT'S CORRECT.

3 Q. SO WHAT CITY POLICY IS BEING FURTHERED IN YOUR MIND
4 BY THE CITY BEARING THE BURDEN OF PAYING THE MRF WORKERS AN
5 ADDITIONAL 11 MILLION DOLLARS?

6 A. WE LIVE IN ONE OF THE MOST EXPENSIVE PLACES TO LIVE
7 ON EARTH, AND FROM MY PERSPECTIVE, MAKING SURE PEOPLE ARE
8 PAID A DECENT WAGE, ESPECIALLY WHEN THE CITY IS IN THE
9 POSITION OF PROCURER OF SERVICES, IT IS VERY IMPORTANT.
10 NORCAL COULD HAVE BEARED THE BRUNT OF THOSE COSTS, BUT GIVEN
11 THAT I WAS CONCERNED ABOUT THIS ALL ALONG, IT DID NOT FEEL
12 INCONSISTENT TO ME, BOTH FROM MY VALUES AND FROM A POLICY
13 PERSPECTIVE.

14 Q. SO THE POLICY IN FACT BEING FURTHERED WAS YOUR
15 POLICY, NOT NECESSARILY THE CITY'S POLICY?

16 A. NO, IT WAS MY, IN MY OPINION BEING CONSISTENT WITH
17 VOTES I HAD ALREADY TAKEN. IT DID NOT FEEL LIKE AN
18 INCONSISTENT VOTE.

19 Q. IF THE COMPENSATION FOR MRF WORKERS AT THE MRF
20 FACILITY WAS NOT COVERED BY THE CITY'S PREVAILING WAGE

21 POLICY OR LIVING WAGE POLICY, WHAT CITY POLICY DICTATED A
22 LEVEL OF COMPENSATION FOR MRF WORKERS?

23 A. IT WOULD HAVE BEEN, COULD HAVE BEEN WORKER
24 RETENTION OR LABOR PEACE DEPENDING ON HOW NORCAL HAD DECIDED
25 TO HANDLE THIS.

26 Q. WELL, WHEN THE CITY ENTERED INTO THE AGREEMENT BACK
27 IN MARCH OF '01, THAT INCLUDED A CLAUSE THAT SAID ANY
28 INCREASED COMPENSATION OR WORKERS WOULD BE THE CONTRACTOR'S

SUE HERFURTH, CSR #9645

1241

1 RESPONSIBILITY. WASN'T THAT A CITY POLICY THAT WAS BEING
2 FURTHERED BY HAVING THAT CLAUSE IN THERE?

3 A. YES.

4 Q. SO WOULDN'T NOW AGREEING TO PAY NORCAL AN
5 ADDITIONAL 11 MILLION DOLLARS, WOULDN'T THAT BE INCONSISTENT
6 WITH THE CITY'S POLICY AS EXPRESSED IN ITS AGREEMENT WITH
7 NORCAL BACK IN 2001?

8 A. FROM THAT PARTICULAR AGREEMENT, YES, BUT THE COSTS
9 WERE STILL SIGNIFICANTLY LOWER, AT LEAST THAT'S WHAT I HAD
10 BEEN TOLD BY STAFF, AND WE WERE HAVING GOOD CUSTOMER
11 SERVICE, AND I CARE ABOUT PEOPLE BEING PAID FAIRLY.

12 Q. WAS IT YOUR IMPRESSION WHEN YOU WERE VOTING ON THIS
13 AMENDMENT THAT THE MRF WORKERS WERE NOT GETTING PAID THE
14 INCREASED WAGES AT THE TIME YOU VOTED ON THIS?

15 A. NO, I UNDERSTOOD WE WOULD BE REIMBURSING, I BELIEVE
16 I UNDERSTOOD WE WOULD HAVE BEEN REIMBURSING EITHER CWS OR
17 NORCAL. I DON'T REMEMBER AT THE TIME.

18 Q. YOU UNDERSTOOD AT THE TIME OF THE VOTE THAT THIS

19 MONEY WAS NOT GOING TO THE WORKERS; THEY WERE ALREADY
20 RECEIVING MONEY, RIGHT?

21 A. IN MY OPINION, IT WAS GOING TOWARD PAYING FOR THE
22 WORKERS' SALARIES. YES, IT WAS GOING INTO THE COMPANY,
23 BUT --

24 Q. BUT DID YOU UNDERSTAND THAT FROM DAY ONE OF
25 OPERATIONS, JULY 1, '02, THE WORKERS WERE GETTING NO LESS
26 THAN THE EXISTING WAGES AND BENEFITS?

27 A. DID I UNDERSTAND THAT WHEN I TOOK THIS VOTE?

28 Q. YES.

SUE HERFURTH, CSR #9645

1242

1 A. THAT'S A GOOD QUESTION. I DON'T RECALL IF I KNEW
2 THAT'S WHEN THE CONTRACT STARTED AND THAT WE WERE
3 REIMBURSING THE COMPANY BACK TO THAT DATE WHEN I TOOK THIS
4 VOTE.

5 Q. WELL, DID YOU UNDERSTAND THAT WHEN YOU TOOK THIS
6 VOTE THAT MORE THAN A YEAR EARLIER, IN '03, CWS ENTERED INTO
7 A COLLECTIVE BARGAINING AGREEMENT WITH THE TEAMSTERS?

8 A. I DON'T RECALL IF I KNEW THAT.

9 Q. I MEAN, ISN'T IT THE CASE, AND DID YOU NOT
10 UNDERSTAND THAT THIS VOTE WAS NOT ABOUT THE WORKERS GETTING
11 MONEY, BECAUSE THEY HAD ALREADY BEEN GETTING MONEY; IT WAS
12 ABOUT WHETHER OR NOT THE CITY WAS GOING TO REIMBURSE NORCAL
13 FOR THIS EXTRA EXPENSE; ISN'T THAT WHAT THE VOTE WAS REALLY
14 ABOUT?

15 A. FOR ME, THE VOTE WAS ABOUT WHETHER OR NOT WE WERE
16 GOING TO PAY PEOPLE A DECENT WAGE. AND EVEN IF WE WERE

17 REIMBURSING A COMPANY FOR THAT, IT DID NOT SEEM INCONSISTENT
18 WITH ME, GIVEN WHAT WE DO WHEN WE, RELATED TO THE PREVAILING
19 WAGE OR THE LIVING WAGE AND WHERE IT APPLIES, AND THIS
20 CONTRACT HAD WORKER RETENTION AND LABOR PEACE. SO NO, FOR
21 ME, IT DID NOT SEEM INCONSISTENT.

22 Q. IF THE WORKERS WERE ALREADY GETTING PAID WHATEVER
23 WAGES THEY WERE ENTITLED TO UNDER THE COLLECTIVE BARGAINING
24 AGREEMENT WITH THE TEAMSTERS, HOW WOULD THIS VOTE CHANGE
25 WHETHER OR NOT THEY GOT PAID?

26 A. IT WOULD HAVE BEEN DEPENDED ON WHETHER OR NOT
27 NORCAL LIVED UP TO THEIR AGREEMENT PERHAPS, OR WHETHER OR
28 NOT CWS LIVED UP TO THEIR AGREEMENT. IT COULD HAVE DEPENDED

SUE HERFURTH, CSR #9645

1243

1 ON WHETHER OR NOT THEY DECIDED THAT THEY WANTED TO DO WORK
2 STOPPAGES -- FROM MY PERSPECTIVE, THE OTHER ELEMENTS OF THE
3 AGREEMENT RELATED TO WORKER RETENTION AND LABOR PEACE WERE
4 IMPORTANT.

5 Q. I UNDERSTAND, BUT THERE WAS A LENGTHY PROCESS THAT
6 WENT THROUGH TO DEVELOP THE RFP, RIGHT?

7 A. CORRECT.

8 Q. OKAY. THE CITY COULD HAVE PUT SOMETHING IN THERE
9 AS A POLICY DECISION BY THE COUNCIL AS A WHOLE SPEAKING TO
10 WHETHER OR NOT NEW CONTRACTORS HAD TO AGREE TO PAY NO LESS
11 THAN THE EXISTING CONTRACTOR, RIGHT?

12 A. THAT'S CORRECT.

13 Q. THE CITY AS A WHOLE CHOSE NOT TO INCLUDE THAT IN
14 THE RFP, RIGHT?

- 15 A. THAT' S CORRECT.
- 16 Q. UH -- WE' VE ALREADY TALKED ABOUT THE FACT THAT
17 PREVAI LING WAGE AND LIVING WAGE DIDN' T APPLY TO MRF WORKERS.
- 18 A. THAT' S CORRECT.
- 19 Q. AND YOU UNDERSTOOD THAT FOR SOME PERIOD OF TIME
20 BEFORE 2004, THE MRF WORKERS WERE GETTING PAID THE HIGHER
21 WAGES AND BENEFITS?
- 22 A. THAT' S CORRECT.
- 23 Q. IF THEY WERE ALREADY GETTING PAID THE HIGHER WAGES
24 AND BENEFITS, HOW WOULD PUTTING MONEY INTO NORCAL OR CWS'
25 POCKETS HAVE ANY IMPACT ON THE WORKERS AND THEIR WAGES?
- 26 A. I THINK I' VE ANSWERED THAT QUESTION A COUPLE OF
27 DIFFERENT TIMES.
- 28 Q. OKAY. I' M TRYING TO UNDERSTAND THE ANSWER.

SUE HERFURTH, CSR #9645

1244

- 1 A. MY ANSWER IS THAT IT DID NOT SEEM INCONSISTENT WITH
2 OTHER ACTIONS THAT THE COUNCIL HAD TAKEN IN THE PAST AND
3 THAT I HAD TAKEN LEADERSHIP ON RELATED TO THE PREVAI LING
4 WAGE AND LIVING WAGES.
- 5 IN GENERAL, THE CONTRACTOR DOES NOT BEAR THE
6 RESPONSIBI LITY FOR THOSE WAGES. IN THIS INSTANCE, AND I
7 UNDERSTAND WE' RE HAVING A DISAGREEMENT, BUT IN THIS INSTANCE
8 IT DID NOT SEEM INCONSISTENT TO ME TO MAKE SURE THE WORKERS
9 WERE PAID. AND WHILE I UNDERSTOOD THAT NORCAL COULD BE THE
10 ONE THAT WAS ON THE HOOK, OR CWS, I WOULD HAVE PAID THE
11 HIGHER WAGES HAD I KNOWN THAT -- THE REPRESENTATI ON YOU' RE
12 MAKING IN TERMS OF AT WHAT TIME WHO KNEW WHAT, WHEN.

13 IF SOMEONE HAD COME TO ME AND SAID, THE CONTRACT
14 NEEDS TO HAVE MORE MONEY, THEN I WOULD HAVE SUPPORTED IT
15 THEN.

16 Q. THOSE OTHER OCCASIONS YOU MADE REFERENCE TO, WERE
17 THOSE OCCASIONS WHERE THE CONTRACTOR DISCLOSED THE EXTRA
18 COST BEFORE THE CONTRACT WAS SIGNED OR AFTER THE CONTRACT
19 WAS SIGNED?

20 A. IF I UNDERSTAND YOUR QUESTION, I WOULD HAVE WANTED
21 TO KNOW BEFORE WE SIGNED A CONTRACT WITH THEM.

22 Q. MY QUESTION IS A BIT DIFFERENT. YOU SAID THAT YOU
23 FELT THAT THIS WAS CONSISTENT WITH PRIOR ACTIONS THE COUNCIL
24 HAD TAKEN WITH REGARD TO OTHER CONTRACTORS. AND MY QUESTION
25 GOES TO THOSE OTHER CASES YOU MADE REFERENCE TO OR HAD IN
26 MIND.

27 ON THOSE OTHER OCCASIONS WHEN THE COUNCIL
28 SUPPORTED PAYING MORE MONEY TO THE CONTRACTOR FOR INCREASED

SUE HERFURTH, CSR #9645

1245

1 LABOR COSTS, WERE THOSE SITUATIONS WHERE THE CONTRACTOR
2 ASKED FOR THE MONEY BEFORE THE CONTRACT WAS SIGNED OR AFTER
3 THE CONTRACT WAS SIGNED?

4 A. IT DEPENDS, BECAUSE ON THE REQUEST FOR PROPOSALS WE
5 HAVE EXCLUSIVE NEGOTIATING AGREEMENTS, AND SOMETIMES THOSE
6 AGREEMENTS GET NEGOTIATED. SO NO, ON OCCASION WE WERE ASKED
7 AFTER ABOUT THE EXTRA COST OF THE LABOR.

8 Q. AFTER THE CONTRACT WAS SIGNED?

9 A. SURE, AND YOU GO BACK AND RENEGOTIATE THAT. THAT'S
10 MORE ON THE REDEVELOPMENT AGENCY SIDE.

11 Q. LET'S TALK ABOUT THE CITY. CAN YOU THINK OF ANY
12 INSTANCE WHERE THE CITY ENTERED INTO AN AGREEMENT WITH A
13 CONTRACTOR AND THEN VOTED TO PAY SUBSTANTIAL SUMS OF MONEY
14 ABOVE AND BEYOND WHAT THE CONTRACT CALLED FOR AFTER THE
15 CONTRACT WAS SIGNED?

16 A. NOT SUBSTANTIAL, BUT I RECALL WE'VE ADDED ADDENDUMS
17 TO A CONTRACT FOR SERVICES WHERE THE SCOPE OF WORK MAY HAVE
18 GOTTEN LARGER OR SMALLER AS OPPOSED TO THE TIME WE TOOK THE
19 INITIAL VOTE.

20 Q. LET'S LOOK AT THIS NORCAL AMENDMENT. DID THE SCOPE
21 OF THE WORK REALLY CHANGE WITH REGARD TO THE AMENDMENT?

22 A. SOMEWHAT, BUT NOT SIGNIFICANTLY.

23 Q. YOU'RE TALKING ABOUT THE TEN NEIGHBORHOOD CLEANUP
24 BINS, THE GARBAGE COMPOSITION STUDY AND THE E-WASTE SCRAP
25 PROGRAM, CORRECT?

26 A. YES.

27 Q. ITEMS WORTH MAYBE A FEW HUNDRED THOUSAND DOLLARS IN
28 COST?

SUE HERFURTH, CSR #9645

1246

1 A. I DON'T KNOW WHAT THE EXACT AMOUNT IS.

2 Q. WE'VE HEARD TESTIMONY ABOUT THAT FROM NORCAL; WOULD
3 THAT SURPRISE YOU TO LEARN IT WAS WORTH SO LITTLE?

4 A. I DIDN'T HEAR THAT TESTIMONY.

5 Q. OKAY. THE CITY WAS GOING TO BE PAYING 11 MILLION
6 DOLLARS IF THE AMENDMENT WENT THROUGH?

7 A. CORRECT.

8 Q. WHAT WAS THE CITY GETTING AS CONSIDERATION FOR THIS

9 AMENDMENT?

10 A. WELL, SOME INCREASED SERVICES, BUT LABOR PEACE, I
11 THINK IS PART OF IT.

12 Q. AND IN THE AMENDMENT, IS THERE ANYTHING ABOUT LABOR
13 PEACE RECITED AS PART OF THE CONSIDERATION?

14 A. NO.

15 Q. AS A MATTER OF FACT, DIDN'T THE CITY ATTORNEY
16 ADVISE THE COUNCIL THAT THAT WOULD NOT BE A LEGALLY ADEQUATE
17 CONSIDERATION BECAUSE NORCAL WAS ALREADY OBLIGATED TO
18 PERFORM THE SERVICE, THEY HAD TO COME UP WITH ADDITIONAL
19 SERVICES IF THERE WAS ANY HOPE OF MAKING THIS CONTRACT
20 VALID; ISN'T THAT WHAT THE CITY ATTORNEY SAID?

21 A. THAT'S NOT MY RECOLLECTION OF WHAT HE SAID, NO.

22 Q. WE'LL GET TO THAT A LITTLE LATER ON WITH THE CITY
23 ATTORNEY. YOU DID UNDERSTAND THAT THE CITY WAS UNDER NO
24 LEGAL OBLIGATION TO AMEND THE CONTRACT?

25 A. I DID.

26 Q. OKAY.

27 A. THAT I DO REMEMBER RICK EXPLAINING TO US.

28 Q. IS THERE ANYTHING IN THE MAYOR'S MEMO ABOUT THE

SUE HERFURTH, CSR #9645

1247

1 MAYOR DIRECTING NORCAL OR CWS TO GO WITH TEAMSTERS?

2 A. NO.

3 Q. NOW, LET'S LOOK AT PAGE TWO OF THE MEMO, THE SECOND
4 PARAGRAPH WHICH BEGINS:

5 HOWEVER, IT SOON BECAME CLEAR THAT THE
6 SITUATION WAS MORE COMPLEX.

7 A. I SEE IT.
8 Q. THERE' S A STATEMENT IN THE MEMO THAT SAYS:
9 AFTER COUNCIL APPROVAL, THE MAYOR' S OFFICE
10 LEARNED THAT THE WORKERS TO BE RETAINED FROM WASTE
11 MANAGEMENT WOULD BE EXPECTED TO CHANGE UNIONS.
12 DO YOU SEE THAT LINE?
13 A. I DO.
14 Q. WHICH COUNCIL APPROVAL DID YOU UNDERSTAND THIS MEMO
15 TO BE REFERRING TO?
16 A. I WOULD HAVE ASSUMED IT WOULD HAVE BEEN THE FINAL
17 ONE WE TOOK, WHICH WAS IN EITHER DECEMBER OR AFTER THAT.
18 Q. WELL, THERE WERE TWO VOTES ON THE PROPOSAL, AND
19 THIS WAS IN MARCH 2000, AND THERE WAS THE MARCH ' 01 VOTE
20 ACCEPTING THE CONTRACT, SO WHICH OF THE VOTES?
21 A. PROBABLY THE MARCH ' 01 IS THE ONE I WOULD REMEMBER
22 OR I WOULD HAVE THOUGHT THAT THAT WAS THE CASE.
23 Q. WHY DID YOU THINK THAT WAS THE CASE?
24 A. BECAUSE I THOUGHT I WOULD HAVE KNOWN ABOUT IT
25 SOONER IF THAT HAD NOT BEEN THE CASE.
26 Q. WE JUST SPENT SOME TIME LOOKING AT THE OCTOBER 10,
27 2000 COUNCIL MEETING ON THE FIRST VOTE ON THE NORCAL
28 PROPOSAL, CORRECT?

SUE HERFURTH, CSR #9645

1248

1 A. CORRECT.
2 Q. AND DIDN' T MR. FLOTTE FROM THE ILWU SPEAK AT THE
3 COUNCIL AND SAY THAT HE REPRESENTED THE CWS WORKERS IN
4 OAKLAND AND SACRAMENTO AND THERE WAS AN EXPANSION AGREEMENT

5 THAT COVERED SAN JOSE AND CWS' S OPERATION IN SAN JOSE?

6 A. YES.

7 Q. DID YOU ALSO KNOW THAT WASTE MANAGEMENT, WHICH WAS
8 THE OUTGOING CONTRACTOR, USED THE TEAMSTERS TO REPRESENT ITS
9 MRF WORKERS?

10 A. I DON' T KNOW. I WOULD HAVE ASSUMED THAT, BUT I
11 DON' T RECALL THAT BEING SOMETHING THAT I WAS CONSIDERING.

12 Q. IF THAT WERE TRUE THOUGH, AND THERE WAS A
13 REQUIREMENT IN THE CONTRACT THAT CWS FIRST HIRE EXISTING
14 DISPLACED WORKERS, WOULDN' T THAT MEAN THAT THE WORKERS WOULD
15 BE EXPECTED TO CHANGE UNIONS?

16 A. IT COULD MEAN THAT; IT COULD ALSO MEAN THAT THE TWO
17 UNIONS THAT WERE HAVING A CONFLICT WOULD GO TO THE LABOR
18 MOVEMENT AND EITHER DEAL WITH THE CONFLICT THERE OR GO TO
19 THE LABOR RELATIONS BOARD AND FIGURE OUT WHO WOULD REPRESENT
20 THOSE WORKERS.

21 Q. IN ANY EVENT, YOUR TESTIMONY IS WHEN THE MEMO
22 SPEAKS ON PAGE TWO ABOUT, AFTER COUNCIL APPROVAL, THE
23 MAYOR' S OFFICE LEARNED THE WORKERS TO BE RETAINED FROM WASTE
24 MANAGEMENT WOULD BE EXPECTED TO CHANGE UNIONS, YOU THOUGHT
25 THAT REFERRED TO THE THIRD AND LAST VOTE ON THE CONTRACT IN
26 MARCH OF 2001?

27 A. CORRECT.

28 Q. OKAY. AND THEN LATER ON IN THE MEMO IT TALKS

SUE HERFURTH, CSR #9645

1249

1 ABOUT:

2 TO CONFORM TO COUNCIL DIRECTION, THE MAYOR

3 OFFICE CONVENED A MEETING BETWEEN NORCAL AND THE
4 LEADERSHIP OF THE TEAMSTER' S LOCAL AND A
5 REPRESENTATIVE OF THE CENTRAL LABOR COUNCIL TO
6 IDENTIFY SOLUTIONS OF THE JURISDICTIONAL ISSUE.

7 DO YOU SEE THAT SENTENCE?

8 A. I DON' T.

9 Q. SAME PARAGRAPH THAT BEGINS, HOWEVER --

10 A. I SEE IT NOW.

11 Q. DID THE COUNCIL EVER DIRECT THE MAYOR TO MEET WITH
12 NORCAL AND THE TEAMSTERS AND CENTRAL LABOR COUNCIL TO
13 IDENTIFY SOLUTIONS TO THE JURISDICTIONAL ISSUE?

14 A. NO.

15 Q. WHAT DID YOU UNDERSTAND THAT STATEMENT TO BE A
16 REFERENCE TO?

17 A. I UNDERSTOOD THAT TO BE THAT THERE WAS PROBABLY
18 LABOR UNREST AND THAT THE MAYOR' S OFFICE TOOK LEADERSHIP IN
19 GETTING INVOLVED IN THAT.

20 Q. OKAY. NOW, LET' S TURN TO PAGE THREE. IF YOU LOOK
21 AT THE FIRST PARAGRAPH ON PAGE THREE, IT READS:

22 THE HIGHER COST WILL NOT INCREASE RATES FOR
23 OUR RESIDENTS.

24 DO YOU SEE THAT LINE?

25 A. I DO.

26 Q. HOW DID YOU THINK THAT IT WAS POSSIBLE TO PAY
27 NORCAL AN ADDITIONAL 11 MILLION DOLLARS BEYOND WHAT WAS
28 ORIGINALLY CALLED FOR IN THE CONTRACT WITHOUT INCREASING THE

SUE HERFURTH, CSR #9645

1250

1 RATES FOR THE RESIDENTS?

2 A. WELL, WHAT I WOULD HAVE ASSUMED, AND PROBABLY WHAT
3 I SHOULD HAVE ASKED AT THE TIME, WAS THAT IT WOULD TAKE
4 MONEY POTENTIALLY THAT WE WERE USING IN THE GENERAL FUND TO
5 SUPPLANT THE ENTERPRISE FUND WE USED FOR SINGLE-FAMILY
6 HOUSING AND RECYCLING, GARBAGE PICKUP.

7 Q. YOUR ASSUMPTION WAS THAT THE 11 MILLION DOLLARS WAS
8 GOING TO BE PAID FOR BY DIPPING FURTHER INTO THE GENERAL
9 FUND?

10 A. POTENTIALLY, AND THE OTHER POSSIBILITY IS THAT WE
11 HAD REACHED THE 100 PERCENT COST RECOVERY OR A LITTLE ABOVE
12 THAT, BECAUSE I REMEMBERED THAT AT SOME POINT THEY WERE -- I
13 DON'T KNOW IF IT WAS JIM HOLGERSON -- I REMEMBER SOMEONE
14 TALKING TO US ABOUT CREATING A RESERVE THAT LEFT SOME
15 FLEXIBILITY IF THERE WAS EVER A WORK STOPPAGE OR SOME OTHER
16 ACTION LIKE THAT, BUT I DON'T REMEMBER THE AMOUNT.

17 Q. YOU DIDN'T KNOW, I GUESS YOU'RE TELLING US, HOW IT
18 WAS, EXACTLY HOW IT WAS GOING TO WORK THAT NORCAL WAS GOING
19 TO GET THE EXTRA 11 MILLION DOLLARS AND THE RATES WERE NOT
20 GOING TO HAVE TO BE INCREASED?

21 A. YES. WHAT I JUST TOLD YOU IS WHAT I ASSUMED. I
22 DON'T REMEMBER ASKING THAT SPECIFICALLY.

23 Q. NOW, THERE'S A REFERENCE ABOUT SOMETHING BEING
24 OUTLINED IN AN ATTACHED MEMORANDUM FROM THE ADMINISTRATION.
25 DO YOU SEE THAT?

26 A. IS IT ON THE SAME SHEET?

27 Q. LET ME SEE IF I CAN FIND IT FOR YOU. IT'S AT THE
28 BOTTOM OF PAGE TWO. IT SAYS:

SUE HERFURTH, CSR #9645

1 AS OUTLINED IN THE ATTACHED MEMORANDUM, THE
2 ADMINISTRATION STAFF HAS REVIEWED THE AMENDMENT
3 REQUEST.

4 A. MM-HMM.

5 Q. DO YOU RECALL THERE BEING SOMETHING ATTACHED TO
6 THIS MEMO WHEN YOU SIGNED IT?

7 A. I DON'T RECALL.

8 Q. LET ME DIRECT YOUR ATTENTION TO PAGE THREE OF THE
9 MEMO WHERE THE MAYOR OUTLINES -- YOU DIDN'T CRAFT THIS MEMO,
10 RIGHT?

11 A. NO, I DIDN'T.

12 Q. YOU DIDN'T REQUEST THAT IT BE PREPARED, CORRECT?

13 A. NO, I DID NOT.

14 Q. IF YOU DIDN'T DO IT, THEN COUNCILMEMBER DANDO
15 DIDN'T, THAT WOULD HAVE LEFT ONLY THE MAYOR AND HIS STAFF TO
16 BE INVOLVED IN THIS MEMO, RIGHT?

17 A. THAT'S CORRECT.

18 Q. DID YOU SPEAK WITH MAYOR GONZALES ABOUT AMENDING
19 THE NORCAL AGREEMENT BEFORE SIGNING THIS MEMO?

20 A. UH -- I DON'T RECALL THAT I SPOKE TO HIM DIRECTLY.

21 Q. DID YOU SPEAK TO ANYONE ON HIS STAFF ABOUT THIS
22 SUBJECT?

23 A. I DON'T RECALL IF I DID.

24 Q. DID THE MAYOR SAY ANYTHING ABOUT ANY PROMISES OR
25 REPRESENTATIONS THAT MAY HAVE BEEN MADE TO NORCAL PRIOR TO
26 YOUR SIGNING THIS MEMO?

27 A. NO, HE DID NOT.

28 Q. DID THE MAYOR SAY ANYTHING ABOUT WHEN HE LEARNED

1 THAT THE WORKERS TO BE RETAINED FROM WASTE MANAGEMENT WOULD
2 BE EXPECTED TO CHANGE UNIONS?

3 A. NO, HE DIDN' T.

4 Q. DID THE MAYOR SAY ANYTHING ABOUT WHEN HE LEARNED
5 THAT THE WORKERS TO BE RETAINED FROM WASTE MANAGEMENT WOULD
6 BE TAKING A PAY CUT?

7 A. NO.

8 Q. DID THE MAYOR TELL YOU THAT HE WAS THE ONE TO
9 DIRECT NORCAL AND CWS TO SWITCH TO THE TEAMSTERS AT A
10 MEETING THAT TOOK PLACE ON OCTOBER 6, 2000 AT CITY HALL?

11 A. NO, HE DID NOT.

12 Q. WOULD THOSE FACTS HAVE BEEN IMPORTANT TO YOU TO
13 KNOW BEFORE DECIDING WHETHER OR NOT TO SIGN THIS MEMO?

14 A. YES.

15 Q. WHY?

16 A. WELL, ONE, I SUSPECT HAD I KNOWN THAT A LONG TIME
17 AGO WE WOULD HAVE, THAT WOULD HAVE BEEN TALKED ABOUT AT
18 COUNCIL, SO WE WOULDN' T HAVE BEEN IN THE SITUATION AT THIS
19 CONVERSATION.

20 Q. DID YOU TALK TO JOE GUERRA ABOUT AMENDING THE
21 NORCAL AGREEMENT BEFORE SIGNING THIS MEMO?

22 A. I DON' T RECALL SPECIFICALLY TALKING TO HIM, BUT IN
23 ALL LIKELIHOOD I WOULD HAVE TALKED TO HIM.

24 Q. ON ANY OF THOSE OCCASIONS YOU MIGHT HAVE SPOKEN TO
25 JOE GUERRA ABOUT AMENDING THIS AGREEMENT, DID MR. GUERRA SAY
26 ANYTHING ABOUT ANY PROMISES OR REPRESENTATIONS THAT MAY HAVE
27 BEEN MADE TO NORCAL?

28 A. NO.

SUE HERFURTH, CSR #9645

1253

- 1 Q. DID MR. GUERRA SAY ANYTHING ABOUT DIRECTING NORCAL
2 OR CWS TO SWITCH TO THE TEAMSTERS?
3 A. NO.
4 Q. DID YOU SPEAK WITH ANYONE FROM NORCAL OR CWS ABOUT
5 AMENDING THIS AGREEMENT BEFORE SIGNING THIS MEMO?
6 A. I MAY HAVE.
7 Q. DO YOU RECALL WHO?
8 A. UH -- I'M FORGETTING THE GENTLEMAN'S NAME THAT I
9 REMEMBERED MEETING WITH.
10 Q. LET ME THROW OUT SOME NAMES. MICHAEL SANGIACOMO?
11 A. NO.
12 Q. BILL JONES?
13 A. NO.
14 Q. JOHN NICOLETTI?
15 A. YES.
16 Q. ONE OUT OF THREE ISN'T BAD.
17 A. MY MEMORY IS NOT THAT GOOD. I APOLOGIZE.
18 Q. WHEN DID YOU TALK WITH JOHN NICOLETTI?
19 A. I DON'T RECALL THE EXACT DATE, BUT I BELIEVE IT WAS
20 BEFORE THIS COUNCIL MEETING.
21 Q. OKAY. AND THE COUNCIL MEETING ON SEPTEMBER 21?
22 A. CORRECT.
23 Q. WHERE DID THIS DISCUSSION TAKE PLACE?
24 A. MY OFFICE.
25 Q. WHO ELSE WAS PRESENT?
26 A. I THINK IT MIGHT HAVE BEEN JUST JOHN AND I.

27 Q. DID MR. NICOLETTI SAY ANYTHING ABOUT ANY PROMISES
28 OR REPRESENTATIONS THAT MAY HAVE BEEN MADE TO NORCAL OR CWS?

SUE HERFURTH, CSR #9645

1254

1 A. NO. HE DID SAY THAT RON WAS SUPPORTING --

2 Q. I'M SORRY. I'M HAVING TROUBLE HEARING.

3 A. I APOLOGIZE. I HAVE BEEN TALKING AN AWFUL LOT
4 LATELY.

5 Q. I CAN IMAGINE.

6 A. I DID SAY THAT WHEN THIS COMES FORWARD, THE
7 AMENDMENT COMES FORWARD, BECAUSE HE KNEW IT WOULD, HE HAD
8 THE MAYOR'S SUPPORT ON IT, BUT HE DID NOT INDICATE ANY, I
9 WOULD HAVE ASSUMED -- MY UNDERSTANDING OF THAT WOULD HAVE
10 BEEN THAT HE HAD TALKED TO RON BEFORE HE CAME TO SEE ME.

11 Q. DID MR. NICOLETTI SAY ANYTHING ABOUT THE MAYOR
12 DIRECTING NORCAL OR CWS TO SWITCH TO TEAMSTERS?

13 A. HE DID NOT.

14 Q. DID MR. NICOLETTI SAY ANYTHING ABOUT THE MAYOR
15 GIVING NORCAL OR CWS ANY ASSURANCES ABOUT BEING REIMBURSED
16 FOR THE INCREASED LABOR COSTS OF CWS SWITCHING TO THE
17 TEAMSTERS?

18 A. HE DID NOT.

19 Q. DID YOU BELIEVE THE MAYOR HAD AUTHORITY BY VIRTUE
20 OF HIS POSITION AS MAYOR TO DIRECT NORCAL OR CWS TO CHOOSE
21 ONE UNION OVER ANOTHER?

22 A. NO.

23 Q. DO YOU BELIEVE THE MAYOR HAD AUTHORITY BY VIRTUE OF
24 BEING THE MAYOR OF SAN JOSE TO MAKE PROMISES OR

25 REPRESENTATIONS ABOUT THE CITY PAYING EXTRA COMPENSATION TO
26 NORCAL?

27 A. IF HE MADE THOSE ON BEHALF OF THE CITY?

28 Q. YES, ON BEHALF OF THE CITY. DO YOU BELIEVE HE HAD

SUE HERFURTH, CSR #9645

1255

1 THE AUTHORITY TO DO THAT?

2 A. NONE OF US DO, AS INDIVIDUALS, HAVE AUTHORITY TO DO
3 THAT.

4 Q. LOOK. IF WE WERE DEALING WITH THE SITUATION THAT
5 THE PARTIES BELIEVED IT WAS TOTALLY LEGAL AND ABOVE BOARD,
6 AND IT HAD BEEN THE CASE THAT PRIOR TO THE CITY SIGNING THE
7 AGREEMENT, THE MAYOR HAD TOLD NORCAL OR SUGGESTED TO NORCAL
8 THAT THEY NEEDED TO SWITCH TO THE TEAMSTERS, AND DON'T WORRY
9 ABOUT THE COST BECAUSE THE CITY WILL MAKE YOU WHOLE ON THOSE
10 COSTS, THE PARTIES TO THAT TRANSACTION THOUGHT THAT WAS
11 PERFECTLY ABOVE BOARD AND LEGAL, WHEN IT CAME TIME TO
12 ACTUALLY VOTE ON THIS PAYMENT AND THIS AMENDMENT, WOULDN'T
13 YOU EXPECT THOSE PEOPLE TO SHARE THAT INFORMATION WITH THE
14 REST OF THE COUNCIL?

15 A. IF THAT'S WHAT OCCURRED, YES.

16 Q. DID THEY SHARE THAT INFORMATION WITH YOU?

17 A. NO.

18 Q. I SEE WE'RE FIVE TO 12. I THINK WE HAVE TO TAKE
19 OUR NOON RECESS NOW. I APOLOGIZE. WE'RE GETTING CLOSE, BUT
20 WE HAVE A LITTLE MORE TIME, AND I UNDERSTAND BECAUSE OF
21 COMMITMENTS THAT YOU WON'T BE ABLE TO RETURN UNTIL 2:00
22 O' CLOCK.

23 A. THAT' S CORRECT.
24 THE FOREPERSON: LET ME REMIND YOU OF THE
25 CONFIDENTIALITY ADMONITION THAT YOU' RE NOT TO SAY OR TELL
26 ANYBODY WHAT YOU SAW OR SAID AT THIS SESSION.
27 THE WITNESS: I UNDERSTAND. THANK YOU.
28 MR. FINKELSTEIN: THANK YOU VERY MUCH. HAVE A

SUE HERFURTH, CSR #9645

1256

1 NICE LUNCH.
2 THE FOREPERSON: WE WILL COME BACK AT 2:00
3 O' CLOCK.
4 MR. FINKELSTEIN: THANK YOU.
5 (THE LUNCHEON RECESS WAS TAKEN.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

21
22
23
24
25
26
27
28

SUE HERFURTH, CSR #9645

1257

1 SAN JOSE, CALIFORNIA APRIL 12, 2006

2

3

AFTERNOON SESSION:

4

THE FOREPERSON: CAN I CALL THE GRAND JURY TO
5 ORDER? ALL OF THE GRAND JURORS ARE PRESENT EXCEPT FOR
6 MR. (NAME REDACTED).

7

MR. FINKELSTEIN: I'LL JUST REMIND YOU YOU'RE
8 STILL UNDER OATH, HAVING BEEN PREVIOUSLY SWORN. DO YOU
9 UNDERSTAND THAT?

10

THE WITNESS: I DO. THANK YOU.

11

BY MR. FINKELSTEIN:

12

Q. WHEN WE BROKE FOR THE AFTERNOON RECESS, WE WERE
13 TALKING ABOUT THE MAYOR'S SEPTEMBER MEMO YOU COSIGNED. DO
14 YOU RECALL THAT?

15

A. I DO.

16

Q. NOW, WE WERE DISCUSSING THE PROPOSED AMENDMENT, THE
17 11 MILLION DOLLAR AMENDMENT TO INCREASE NORCAL'S

18 COMPENSATION FOR INCREASED LABOR COSTS. DO YOU RECALL THAT?

19 A. I DO.

20 Q. LET ME ASK YOU THIS: THE CITY SELECTED NORCAL
21 THROUGH THE REQUEST FOR PROPOSAL PROCESS, CORRECT?

22 A. CORRECT.

23 Q. AND WOULDN'T ALLOWING ONE OF THE SUCCESSFUL
24 BIDDERS, IN THIS CASE NORCAL, TO COME BACK AFTER THE FACT
25 AND GET ADDITIONAL MONEY, WOULDN'T THAT CALL INTO QUESTION
26 THE INTEGRITY OF THE RFP PROCESS THAT THE CITY EMPLOYED TO
27 SELECT THE HAULERS?

28 A. I THINK IT WOULD, THE INCREASED COSTS WOULD HAVE

SUE HERFURTH, CSR #9645

1258

1 COME CLOSE TO THE OTHER BIDS, YES.

2 SO YOU THINK IT ONLY WOULD CALL INTO QUESTION THE
3 INTEGRITY OF THE PROCESS IF IT WOULD HAVE RESULTED IN
4 BRINGING THE NORCAL COST UP TO THE AREA OF THE OTHER
5 BIDDERS. IS THAT WHAT YOU'RE SAYING?

6 A. YES.

7 Q. HOW WOULD OTHER BIDDERS KNOW THAT THERE WAS A
8 POSSIBILITY OF GOING BACK AFTER THE CONTRACT WAS SIGNED WITH
9 THE CITY AND GETTING ADDITIONAL MONEY? WOULD THERE BE ANY
10 WAY FOR THEM TO KNOW THAT?

11 A. THEY WOULD NOT.

12 Q. WELL, WOULDN'T A POLICY OF -- WOULDN'T LETTING
13 BIDDERS TO COME BACK AFTER THE FACT AND SEEK ADDITIONAL
14 COMPENSATION, WOULDN'T THAT ENCOURAGE BIDDERS TO LOW-BALL
15 THEIR BID, KNOWING THAT THEY COULD GET ADDITIONAL FUNDS

16 AFTER THEY HAD SECURED THE BID?

17 A. I THINK IN THIS PARTICULAR INSTANCE THERE WERE A
18 LOT OF CIRCUMSTANCES THAT WE DIDN'T FEEL COMFORTABLE WITH
19 THAT DIRECTION. IF YOU'RE ASKING ME, AND I THINK YOU ARE,
20 WHETHER IT IS A CONCERN OF MINE THAT OTHER PEOPLE MAY LOOK
21 AT THAT AS AN EXAMPLE, YES, IT IS A CONCERN.

22 Q. WHAT FACTORS WERE OPERATIVE HERE THAT YOU KNEW
23 ABOUT BACK IN SEPTEMBER 2004 THAT MADE YOU FEEL COMFORTABLE
24 SUPPORTING THIS AMENDMENT?

25 A. THE -- AS WE DISCUSSED BEFORE ABOUT THE PREVAILING,
26 WHAT I DISCUSSED EARLIER RELATED TO OUR NORMAL CONDUCT
27 RELATED TO THE PREVAILING WAGE AND LIVING WAGES MADE ME FEEL
28 COMFORTABLE ABOUT MOVING FORWARD, THAT THE PRICE WAS STILL

SUE HERFURTH, CSR #9645

1259

1 LESS THAN OTHER BIDDERS, CUSTOMERS WERE GETTING GOOD
2 SERVICE, OTHER ELEMENTS OF THE CONTRACT WERE BEING LIVED UP
3 TO.

4 Q. WHY WAS THIS IN YOUR MIND, THE PREVAILING WAGE AND
5 LIVING WAGE ISSUE WHEN YOU NOW ACKNOWLEDGE TO US THE CITY'S
6 PREVAILING WAGE AND LIVING WAGE POLICIES DID NOT APPLY TO
7 THESE MRF WORKERS AT CWS?

8 A. I APOLOGIZE IF I HAVEN'T BEEN CLEAR ON THIS POINT,
9 BUT IT'S NOT MY CONTENTION THAT LIVING WAGE AND PREVAILING
10 WAGE POLICIES ARE THE SAME AS THE, I MEAN THAT THE LIVING
11 WAGE AND PREVAILING WAGE POLICIES ARE PART OF THE CURRENT
12 CONTRACT. THEY ARE NOT. BUT THE FACT THAT THE CITY IN
13 OTHER INSTANCES HAS BEEN, AS A PROCURER OF SERVICES, HAS

14 BEEN THE ORGANIZATION THAT HAS TAKEN UP THE SLACK OR PAID
15 FOR THE DIFFERENCE OF PREVAILING WAGE AND LIVING WAGE DID
16 NOT MAKE THAT TO ME VERY DIFFERENT RELATED TO PAYING PEOPLE
17 A DECENT WAGE FOR THE WORK THEY WERE DOING.

18 Q. ANY OTHER REASONS WHY YOU THOUGHT, WHY YOU
19 SUPPORTED THIS AMENDMENT?

20 A. FROM THE VERY BEGINNING OF THIS PROCESS, I WAS
21 CONCERNED ABOUT PREVAILING -- LABOR PEACE AND WORKER
22 RETENTION. AND MY CONCERNS -- AND STREET SWEEPING. AND MY
23 CONCERNS STAYED CONSISTENT THROUGHOUT THE PROCESS.

24 Q. SO IN LISTENING TO YOUR ANSWERS, IT DOESN'T SOUND
25 LIKE THE TEN ADDITIONAL NEIGHBORHOOD CLEANUP BINS OR E-SCRAP
26 PROGRAM OR THE GARBAGE COMPOSITION STUDY WERE THE FACTORS
27 THAT WERE IMPORTANT FOR YOU IN DECIDING TO SUPPORT THIS
28 AMENDMENT.

SUE HERFURTH, CSR #9645

1260

1 A. THEY WERE MINOR FACTORS, BUT MY PRIMARY CONCERN IS
2 AS I STATED ALREADY.

3 Q. NOW, I THINK WE ALSO DISCUSSED THIS MORNING WHETHER
4 OR NOT YOU UNDERSTOOD THAT A PORTION OF THE 11 MILLION
5 DOLLARS WAS GOING TO BE PAID RETROACTIVELY FOR COSTS
6 INCURRED IN THE PAST FOR THESE EXTRA LABOR COSTS. AND I
7 THINK YOUR ANSWER WAS YOU WEREN'T CLEAR ON THAT --

8 A. I WASN'T CLEAR ON THE DATE THAT RETROACTIVITY WOULD
9 OCCUR. I DIDN'T KNOW WHAT DATE THE CHANGE HAPPENED RELATED
10 TO WORKERS GOING FROM ONE UNION TO ANOTHER.

11 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN PREVIOUSLY

12 MARKED AS EXHIBIT 91, A SEPTEMBER 16, 2004 MEMO TO THE MAYOR
13 AND CITY COUNCIL FROM DEPUTY CITY MANAGER JAMES HOLGERSON.

14 HAVE YOU SEEN THAT DOCUMENT BEFORE?

15 A. I DON'T RECALL SEEING IT, BUT IF IT CAME IN THE
16 COUNCIL PACKET --

17 Q. LET'S TRY IT THIS WAY. DO YOU HAVE ANY REASON TO
18 BELIEVE THAT, IN THE ORDINARY COURSE OF BUSINESS AT THE
19 CITY, YOU WOULD NOT HAVE RECEIVED A COPY OF THIS MEMO?

20 A. NO.

21 Q. IF YOU LOOK AT PAGE THREE, I THINK IT IS, THERE'S A
22 SCHEDULE OF PAYMENTS SHOWING THE DATES FOR WHICH THE PAYMENT
23 IS SOUGHT AND THE AMOUNT OF PAYMENT.

24 DO YOU SEE THAT?

25 A. I DO.

26 Q. YOU'LL NOTICE THE FIRST PAYMENT COVERS THE PERIOD
27 OF JULY 1, '02 TO JULY 1, '03; IT'S IN THE AMOUNT OF 1.9
28 MILLION DOLLARS.

SUE HERFURTH, CSR #9645

1261

1 A. CORRECT.

2 Q. THIS MATTER IS BEING BROUGHT TO THE COUNCIL IN
3 SEPTEMBER OF '04, CORRECT?

4 A. CORRECT.

5 Q. FROM THIS MEMO IT WOULD BE CLEAR THAT THIS FIRST
6 PAYMENT COVERS THE PERIOD JULY 1, '02 TO JULY 1, '03 AS THE
7 AMOUNT OF 1.9 MILLION DOLLARS?

8 A. CORRECT.

9 Q. AND THEN THE SECOND PAYMENT IS THE PERIOD JULY 1,

10 '03 TO JULY 1, '04; IT'S IN EXCESS OF 2.1 MILLION DOLLARS?

11 A. CORRECT.

12 Q. AGAIN, THAT WOULD BE RETROACTIVE, WOULD IT NOT?

13 A. CORRECT.

14 Q. AND FROM THIS MEMO, IS THERE ANY REASON THAT YOU
15 WOULDN'T HAVE READ THE MEMO OR REALIZED THAT OF THIS 11
16 MILLION DOLLARS, AT LEAST FOUR MILLION IS RETROACTIVE FOR
17 COSTS ALREADY INCURRED?

18 A. NO.

19 Q. AND SINCE THE FIRST DATE FOR WHICH PAYMENT IS
20 SOUGHT IS JULY 1, '02, THAT HAPPENS TO BE THE FIRST DATE
21 FROM WHEN SERVICES WERE SUPPOSED TO START BY NORCAL AND CWS,
22 CORRECT?

23 A. CORRECT.

24 Q. SO IF YOU HAD SEEN THIS MEMO BACK IN SEPTEMBER
25 OF '04, NO DOUBT YOU WOULD HAVE REALIZED THAT THE WORKERS
26 WERE BEING PAID BACK TO JULY 1, '02, WHEN THE CONTRACT FIRST
27 STARTED, CORRECT?

28 A. THAT'S LIKELY.

SUE HERFURTH, CSR #9645

1262

1 Q. IS THERE ANY REASON WHY YOU WOULDN'T HAVE MADE THAT
2 CONNECTION?

3 A. NO.

4 Q. SO, PRESUMABLY, YOU UNDERSTOOD AT THE TIME THAT YOU
5 SUPPORTED THIS AMENDMENT THAT THE WORKERS HAD ALREADY BEEN
6 PAID THIS EXTRA AMOUNT, CORRECT?

7 A. CORRECT.

8 Q. AND THE MONEY THAT THE 11 MILLION DOLLARS WAS GOING
9 TO REIMBURSE NORCAL FOR MONEY THAT HAD ALREADY BEEN PAID OUT
10 TO WORKERS?

11 A. CORRECT.

12 Q. LET ME SHOW YOU NEXT WHAT'S BEEN MARKED AS EXHIBIT
13 92, WHICH IS A CERTIFIED COPY OF THE COUNCIL MINUTES FOR
14 SEPTEMBER 21, 2004.

15 AND LET ME DIRECT YOUR ATTENTION TO ITEM 7.3 ON
16 THE AGENDA.

17 FIRST OF ALL, DID YOU WANT TO READ IT IN ITS
18 ENTIRETY BEFORE I ASK QUESTIONS?

19 A. GO AHEAD, AND IF I NEED TO LOOK SOMETHING UP --

20 Q. FIRST OF ALL, IF WE LOOK UNDER THE HEADING
21 DOCUMENTS FILED, IT INDICATES ACCORDING TO THE MINUTES THAT
22 THIS SEPTEMBER 16 MEMO FROM MAYOR GONZALES CO-SIGNED BY VICE
23 MAYOR DANDO AND YOURSELF WAS FILED AS PART OF THE COUNCIL
24 RECORD, CORRECT?

25 A. CORRECT.

26 Q. AND COULD YOU JUST BRIEFLY TELL US WHAT ACTION THE
27 COUNCIL TOOK ON THE PROPOSED AMENDMENT TO THE NORCAL
28 AGREEMENT?

SUE HERFURTH, CSR #9645

1263

1 A. THE COUNCIL VOTED TO SUPPORT IT WITH THREE PEOPLE
2 OPPOSING IT -- TWO OR THREE PEOPLE.

3 Q. I THINK, IF I RECALL CORRECTLY, YOU ACTUALLY MADE
4 THE MOTION TO AMEND THE AGREEMENT?

5 A. THAT'S WHAT IT SAYS HERE.

- 6 Q. INDEPENDENT OF THAT, DO YOU RECALL THAT?
- 7 A. NO.
- 8 Q. NOW, AT THE TIME THAT YOU VOTED IN FAVOR OF
- 9 AMENDING THE NORCAL AGREEMENT, YOU UNDERSTOOD THAT THERE WAS
- 10 NO LEGAL OBLIGATION ON THE PART OF THE CITY TO AMEND THE
- 11 EXISTING CONTRACT?
- 12 A. I DID.
- 13 Q. AT THE TIME PRIOR TO VOTING -- AT THE VOTE BEFORE
- 14 THE COUNCIL, DID THE MAYOR OR NORCAL SAY ANYTHING ABOUT
- 15 PROMISES OR REPRESENTATIONS THAT MAY HAVE BEEN MADE TO
- 16 NORCAL?
- 17 A. NO.
- 18 Q. DID THE MAYOR OR NORCAL SAY ANYTHING ABOUT THE
- 19 MAYOR DIRECTING NORCAL OR CWS TO USE TEAMSTERS INSTEAD OF
- 20 LONGSHOREMEN?
- 21 A. NO, THEY DID NOT.
- 22 Q. AT THE TIME YOU VOTED IN FAVOR OF AMENDING THE
- 23 NORCAL AGREEMENT, YOU UNDERSTOOD THAT CWS HAD ALREADY
- 24 ENTERED INTO A COLLECTIVE BARGAINING AGREEMENT WITH THE
- 25 TEAMSTERS, CORRECT?
- 26 A. CORRECT.
- 27 Q. AS A MATTER OF FACT -- NEVER MIND.
- 28 AT THE TIME THAT YOU VOTED ON THIS AMENDMENT TO

SUE HERFURTH, CSR #9645

1264

- 1 NORCAL'S AGREEMENT WITH THE CITY, DID YOU HAVE ANY REASON --
- 2 ON SEPTEMBER 21, THAT IS, DID YOU HAVE ANY REASON TO SUSPECT
- 3 THAT PROMISES OR ASSURANCES HAD BEEN MADE TO NORCAL IN SOME

4 KIND OF SECRET SIDE DEAL?

5 A. NO, I DID NOT.

6 Q. NOW, PRIOR TO VOTING IN THE NORCAL AGREEMENT, DID
7 YOU RECEIVE A MEMO DATED SEPTEMBER 20, 2004 FROM
8 COUNCILMEMBERS REED AND LEZOTTE?

9 A. I DID.

10 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED AS GRAND
11 JURY EXHIBIT 93, WHICH IS A MEMO TO THE MAYOR AND COUNCIL
12 DATED SEPTEMBER 20, 2004 FROM COUNCILMEMBERS LEZOTTE AND
13 REED.

14 A. THANK YOU.

15 Q. DO YOU THINK THAT YOU RECEIVED THIS MEMO PRIOR TO
16 YOUR VOTE ON SEPTEMBER 21?

17 A. YES.

18 Q. NOW, ITEM TWO ON THE MEMO REFERS TO PROMISES OR
19 REPRESENTATIONS THAT MAY HAVE BEEN MADE TO NORCAL NOT BEING
20 DISCLOSED TO THE COUNCIL WHEN NORCAL WAS APPROVED AS THE
21 PREFERRED VENDOR, CORRECT?

22 A. CORRECT.

23 Q. WHAT DID YOU THINK THAT REFERRED TO WHEN YOU SAW
24 THAT?

25 A. I THOUGHT IT REFERRED TO AN ACCUSATION THAT I
26 DIDN'T BELIEVE TO BE TRUE.

27 Q. WHAT ACCUSATION WAS THAT?

28 A. ANY PROMISES OR REPRESENTATIONS MADE TO NORCAL WERE

SUE HERFURTH, CSR #9645

1265

1 NOT DISCLOSED. I DIDN'T KNOW WHAT THAT REFERRED TO OR WHO

2 THEY WERE REALLY TALKING ABOUT, SO IT SOUNDED LIKE AN
3 ACCUSATION THAT WAS NOT SPECIFIC OR CLEAR.

4 Q. WELL, DID ANYONE INQUIRE OF THE AUTHORS OF THE
5 MEMO, WHO I TAKE IT AT THAT TIME WERE PRESENT AT THE COUNCIL
6 VOTE, WHAT THEY MEANT BY THAT STATEMENT AND WHAT THE SOURCE
7 OF THE INFORMATION WAS?

8 A. I DON'T RECALL, BUT I DON'T ALSO RECALL CHUCK OR
9 LINDA SAYING WHAT IT WAS EITHER.

10 Q. WELL, IS IT TRUE THEN IN YOUR MIND THAT AT THE TIME
11 YOU VOTED ON THE SEPTEMBER 16, 2004 NORCAL AMENDMENT, THAT
12 ANY PROMISES OR REPRESENTATIONS THAT MAY HAVE BEEN MADE TO
13 NORCAL WERE NOT DISCLOSED TO THE COUNCIL WHEN NORCAL WAS
14 APPROVED AS THE PREFERRED VENDOR?

15 A. YOU LOST ME PART OF THE WAY THROUGH THAT QUESTION.
16 I'M SORRY.

17 Q. OKAY. THERE'S A STATEMENT IN PARAGRAPH TWO THAT
18 REFERS TO PROMISES OR REPRESENTATIONS HAVING BEEN MADE AND
19 NOT DISCLOSED TO THE COUNCIL WHEN NORCAL WAS FIRST APPROVED
20 AS THE PREFERRED VENDOR. DO YOU SEE THAT?

21 A. I DO.

22 Q. WELL, IN YOUR MIND, BASED ON WHAT YOU KNEW THEN,
23 NOT WHAT YOU MAY HAVE SUBSEQUENTLY COME TO UNDERSTAND, BUT
24 BASED ON WHAT YOU KNEW THE, BACK IN SEPTEMBER OF '04, DID
25 YOU BELIEVE THAT TO BE A CORRECT STATEMENT?

26 A. NO.

27 Q. I THINK WE MAY BE HAVING A GRAMMATICAL OR
28 SEMANTICAL ISSUE. THE AUTHORS ARE SAYING IF THERE ANY

SUE HERFURTH, CSR #9645

1 PROMISES OR REPRESENTATIONS MADE TO NORCAL THEY WERE NOT
2 DISCLOSED TO THE COUNCIL. DO YOU DISAGREE WITH THAT?

3 A. NO; THAT I AGREE WITH.

4 Q. I THINK THAT'S WHAT MY QUESTION WAS.

5 A. I'M SORRY.

6 Q. YOU AGREED WITH THAT STATEMENT BASED ON YOUR STATE
7 OF MIND THEN IN '04 THAT ANY PROMISES OR REPRESENTATIONS
8 THAT MAY HAVE BEEN MADE TO NORCAL WERE NOT DISCLOSED TO THE
9 COUNCIL, CORRECT?

10 A. CORRECT.

11 Q. AND AS FAR AS YOU YOURSELF, DID YOU INITIATE ANY
12 INQUIRY INTO WHAT PROMISES OR REPRESENTATIONS MAY HAVE BEEN
13 MADE?

14 A. I DID NOT.

15 Q. IS THERE A PARTICULAR REASON WHY NOT?

16 A. MY FEELING WOULD HAVE BEEN THAT IF SOMEONE HAD
17 BROUGHT SOMETHING LIKE THAT UP, THAT EITHER COUNCILMEMBER
18 COULD HAVE EITHER ASKED THAT QUESTION ON THE DAIS OR -- IN
19 FACT, I DO REMEMBER LINDA ASKING A SERIES OF QUESTIONS, BUT
20 I DON'T REMEMBER WHAT MEETING IT WAS AT, AND GETTING THEM
21 RESPONDED TO.

22 Q. LET'S LOOK AT PARAGRAPH FOUR IN THAT MEMO. IT
23 SAYS:

24 ALLOWING A SIDE DEAL TO ALTER THE TERMS OF
25 THAT AGREEMENT IS NOT FAIR TO OTHER COMPANIES WHO
26 PARTICIPATED IN THE RECYCLE PLUS RFP PROCESS BUT
27 WERE NOT MADE AWARE OF THIS ARRANGEMENT.

28 DO YOU SEE THAT?

1 A. I DO.

2 Q. WHAT SIDE DEAL DID YOU THINK THE MEMO WAS REFERRING
3 TO?

4 A. I DID NOT KNOW. AS A MATTER OF FACT, EVEN AS I
5 READ IT TODAY, MY INTERPRETATION OF THAT IS THE ACTUAL
6 ACTION WE WERE TAKING ON THE 21ST OF SEPTEMBER.

7 Q. YOU THOUGHT THE ACTION THAT WAS COMING BEFORE THE
8 COUNCIL IN A PUBLIC MEETING AND THAT HAD BEEN PLACED ON THE
9 AGENDA AND DULY NOTICED WAS A SIDE DEAL?

10 A. I THOUGHT THAT THE AUTHORS COULD HAVE BEEN IMPLYING
11 THAT, YES.

12 Q. IN WHAT WAY WOULD A PUBLIC ACTION BY THE COUNCIL AT
13 A COUNCIL MEETING BE A SIDE DEAL, IN YOUR MIND?

14 A. WELL, IF SOME MEMBER OF THE COUNCIL THOUGHT IT WAS
15 EGREGIOUS OR INAPPROPRIATE, PEOPLE USE LANGUAGE TO DESCRIBE
16 THEIR CONCERN. THAT COULD HAVE BEEN ONE OF THEM.

17 Q. YOU DIDN'T CONSTRUE A SIDE DEAL AS SOME SECRET
18 BACK-ROOM DEAL OUTSIDE OF THE KNOWLEDGE OF THE ENTIRE
19 COUNCIL?

20 A. AT THAT TIME I DIDN'T -- I HAD NO REASON TO BELIEVE
21 THAT ANYTHING LIKE THAT HAD OCCURRED, THAT THERE WAS SOME
22 SIDE DEAL STRUCK. SO I DIDN'T BELIEVE THAT AT THE TIME.

23 Q. I GUESS WHAT I'M TRYING TO INQUIRE ABOUT WITH THIS
24 MEMO IS WHETHER OR NOT THIS MEMO IN SEPTEMBER OF '04 GAVE
25 YOU REASON TO BELIEVE THAT SOMETHING LIKE THAT MAY HAVE
26 OCCURRED?

27 A. NO, IT DID NOT.

28 Q. OKAY. THERE'S NO RIGHT OR WRONG ANSWER. I DON'T

1 BELIEVE YOU CAN TELL US WHETHER YOU CONNECTED THE DOTS OR
2 DREW INFERENCES OR DIDN'T, AND THAT'S WHAT I'M TRYING TO
3 FIND OUT. I GUESS YOUR TESTIMONY IS DESPITE THIS MEMO, YOU
4 DIDN'T UNDERSTAND OR FIGURE OUT THAT THERE MIGHT HAVE BEEN
5 SOME SIDE DEAL?

6 A. OR BELIEF.

7 Q. OR BELIEF THAT THERE WAS A SIDE DEAL?

8 A. THAT'S CORRECT.

9 Q. NOW, IS THERE AN ATTACHMENT, IS THERE A LETTER
10 ATTACHED TO THE EXHIBIT IN FRONT OF YOU, THE HOLGERSON MEMO,
11 AN ATTACHMENT A?

12 A. LET ME LOOK. THERE IS.

13 Q. WHAT IS ATTACHMENT A, CAN YOU TELL US?

14 A. IT IS A LETTER TO MR. DEL BORGS DORF FROM NORCAL.

15 Q. WHO IN PARTICULAR AT NORCAL IS THE MAIN AUTHOR OF
16 THE LETTER?

17 A. JOHN NICOLETTI.

18 Q. AND IS THERE A PARAGRAPH THAT STARTS OUT:

19 LET ME FIRST RECOUNT SOME BACKGROUND RELATING
20 TO THE ADDITIONAL LABOR COST.

21 A. THERE IS.

22 Q. AND YOU'LL SEE THAT, IS THERE A SENTENCE THAT SAYS:

23 THIS SIGNIFICANT WAGE DISCREPANCY, ALONG WITH
24 THE POSSIBILITY THAT SAN JOSE WORKERS MIGHT LOSE
25 THEIR JOBS, PROMPTED THE MAYOR'S OFFICE TO URGE
26 NORCAL TO EXPLORE ARRANGEMENT WITH CWS THAT WOULD
27 ALLOW CWS TO RETAIN EXISTING WORKERS AT THE HIGHER

28

TEAMSTERS' WAGE SCALE?

SUE HERFURTH, CSR #9645

1269

1 A. YES.

2 Q. NORCAL WAS ADVISED THAT THE CITY DID NOT WANT A
3 ROCK-BOTTOM PRICE FOR ITS NEW COLLECTION CONTRACT IF DOING
4 SO REQUIRED DISPLACING EXISTING RECYCLING FACILITY WORKERS
5 OR FORCING WORKERS TO ACCEPT LOWER PAY.

6 DO YOU SEE THAT?

7 A. I DO.

8 Q. DO YOU HAVE ANY IDEA WHO IN THE CITY MIGHT HAVE SO
9 ADVISED NORCAL?

10 A. NO, I DO NOT.

11 Q. DID YOU MAKE ANY INQUIRES INTO WHETHER THE MAYOR'S
12 OFFICE HAD URGED NORCAL TO EXPLORE AN AGREEMENT WITH CWS
13 THAT WOULD ALLOW CWS TO RETAIN EXISTING WORKERS AT THE
14 HIGHER TEAMSTERS' SCALE?

15 A. MY, NO. AND THE REASON IS THAT MY ASSUMPTION WOULD
16 HAVE BEEN THAT BECAUSE OF THE WORKER RETENTION COMPONENT IN
17 THE CONTRACT THAT THEY WOULD HAVE IN FACT BEEN IN THAT
18 SITUATION, THAT THEY WOULD HAVE BEEN BRINGING ON WORKERS
19 THAT ANYWAY, THAT THEY WOULD HAVE BEEN CHANGING WORKERS, NOT
20 CHANGING, BUT THOSE WORKERS WOULD HAVE RETAINED THEIR JOBS
21 AND COME OVER.

22 Q. BUT THERE WAS NOTHING IN THE RFP WORKER RETENTION
23 PROVISION THAT SPECIFIED WHAT WAGES AND BENEFITS THE REHIERED
24 WORKERS HAD TO BE PAID WAS THERE?

25 A. NO, THERE WAS NOT.

26 Q. THERE WAS NOTHING TO YOUR KNOWLEDGE IN CITY POLICY
27 THAT REQUIRED THE REHIRED WORKERS TO BE PAID A SPECIFIC WAGE
28 OR BENEFIT?

SUE HERFURTH, CSR #9645

1270

1 A. YOU' RE CORRECT.

2 Q. PRIOR TO THE SEPTEMBER 21, 2004 VOTE, DID EITHER
3 THE MAYOR OR NORCAL EVER TELL YOU THAT ON FRIDAY, OCTOBER 6,
4 2000, THAT IS THE FRIDAY BEFORE THE FIRST COUNCIL VOTE ON
5 THE NORCAL PROPOSAL, THE MAYOR TOLD NORCAL THAT HE WOULD
6 REALLY LIKE TO SEE THE CWS FACILITY BE A TEAMSTER FACILITY,
7 AND THE MAYOR ALSO ASKED NORCAL IF THEY WOULD MAKE THAT
8 HAPPEN?

9 A. NO.

10 Q. PRIOR TO THE SEPTEMBER 21, 2004 VOTE, DID THE MAYOR
11 OR NORCAL TELL YOU THAT AT THAT SAME FRIDAY, OCTOBER 6
12 MEETING THE MAYOR TOLD NORCAL, YOU DO IT AND WE' LL MAKE YOU
13 WHOLE?

14 A. NO.

15 Q. WOULD IT HAVE BEEN IMPORTANT FOR YOU TO KNOW ABOUT
16 THAT, IF IN FACT IT OCCURRED, PRIOR TO YOUR CASTING YOUR
17 VOTE ON SEPTEMBER 21, 2004?

18 A. YES.

19 Q. WHY WOULD IT HAVE BEEN IMPORTANT FOR YOU TO KNOW
20 THAT?

21 A. IT WOULD HAVE BEEN IMPORTANT BECAUSE WE WOULD HAVE,
22 OR I WOULD HAVE ENCOURAGED US TO HAVE RESOLVED ALL THESE
23 ISSUES EARLIER WHEN WE TOOK THE VOTE THE FIRST TIME,

24 WHETHER, WHATEVER THE FALLOUT OF THAT MAY HAVE BEEN, I WOULD
25 HAVE WANTED TO HAVE THAT DISCUSSION IN THE OCTOBER TIME
26 FRAME.

27 Q. BEFORE THE FINAL APPROVAL AND SIGNING OF THE
28 CONTRACT?

SUE HERFURTH, CSR #9645

1271

1 A. YES, AND ALSO BECAUSE THE AUDITOR WOULD HAVE
2 UNDERSTOOD THE IMPLICATIONS OF THAT -- ALL OF US WOULD HAVE
3 UNDERSTOOD THE IMPLICATIONS OF THAT.

4 Q. DOES IT STRIKE YOU THERE MAY HAVE BEEN SOME, THE
5 LEGALITY OF THAT MIGHT HAVE BEEN QUESTIONED AS WELL?

6 A. I'M NOT A LAWYER.

7 Q. OKAY. GRANTED, YOU'RE NOT A LAWYER. DID YOU HAVE
8 ANY UNDERSTANDING ABOUT WHETHER OR NOT THERE WOULD BE
9 ANYTHING IMPROPER ABOUT CONDITIONING YOUR VOTE AS A
10 COUNCILMEMBER ON SOMEONE ELSE DOING SOMETHING OR NOT DOING
11 SOMETHING?

12 A. WELL, THAT DEPENDS UPON IF IT'S AN ELEMENT OF A
13 CONTRACT. SO THE ANSWER IS IF IT WAS NOT AN ELEMENT OF THE
14 CONTRACT, YES.

15 Q. YES, WHAT?

16 A. YES, IT WOULD BE IMPROPER.

17 Q. AND IN THIS CASE, GOING WITH THE TEAMSTERS WAS NOT
18 AN ELEMENT OF THE CONTRACT, WAS IT?

19 A. THAT'S CORRECT.

20 Q. DID YOU ATTEND THE DECEMBER 14, 2004 CITY COUNCIL
21 VOTE TO THE NORCAL CONTRACT AMENDMENT?

- 22 A. (NO RESPONSE.)
- 23 Q. THERE WAS A SECOND VOTE?
- 24 A. THERE WAS.
- 25 Q. DO YOU RECALL IT BEING IN DECEMBER OF '04?
- 26 A. I APOLOGIZE, I DON'T RECALL.
- 27 Q. IT'S NOT A MEMORY TEST.
- 28 A. I KNOW. I WOULD BE FLUNKING IT.

SUE HERFURTH, CSR #9645

1272

- 1 Q. THAT'S OKAY. I JUST HAPPEN TO HAVE A CERTIFIED
- 2 COPY OF THE MINUTES OF DECEMBER 14 --
- 3 A. THAT DOESN'T SURPRISE ME.
- 4 MR. FINKELSTEIN: I WILL ASK TO HAVE THIS MARKED
- 5 AS EXHIBIT 100.
- 6 THE FOREPERSON: SO MARKED.
- 7 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
- 8 JURY EXHIBIT GRAND JURY 100.)
- 9 BY MR. FINKELSTEIN:
- 10 Q. I THINK IF YOU LOOK AT ITEM 7.2, I THINK THAT'S THE
- 11 RIGHT --
- 12 A. THANK YOU. I FOUND IT.
- 13 Q. JUST GIVE ME A MOMENT. NOW, HAVE YOU HAD A CHANCE
- 14 TO LOOK AT IT?
- 15 A. YES. I SEE SOME THINGS THAT LOOK FAMILIAR.
- 16 Q. LET ME JUST ORIENT MYSELF HERE. IF YOU GO TO PAGE
- 17 33 OF THE MINUTES THAT DEAL WITH ITEM 7.2, THERE IS A
- 18 PARAGRAPH THAT SAYS IN RESPONSE TO VICE MAYOR DANDO'S
- 19 QUESTION ABOUT WHO MADE THE REQUEST TO NEGOTIATE WITH LOCAL

20 350 RATHER THAN LONGSHOREMEN, NORCAL REPRESENTATIVE
21 NICOLETTI SAID HE DID NOT KNOW.

22 DO YOU SEE THAT?

23 A. YES.

24 Q. HAVE I READ THAT ACCURATELY?

25 A. YOU DID.

26 Q. IT GOES ON TO SAY THAT HE, MEANING MR. NICOLETTI,
27 REPRESENTING NORCAL, ADDED THAT HE WAS NOT WITH NORCAL
28 DURING THE INITIAL PERIOD OF NEGOTIATIONS AND CONFIRMED THAT

SUE HERFURTH, CSR #9645

1273

1 THE REQUEST OF COUNCILMEMBER CORTESE THAT HE HAD NO PERSONAL
2 KNOWLEDGE OF HOW IT CAME TO BE THAT NEGOTIATIONS WERE WITH
3 LOCAL 350 AS OPPOSED TO LONGSHOREMEN?

4 DO YOU SEE THAT?

5 A. I DO.

6 Q. NOW, I TAKE IT HAVING LOOKED AT THE MINUTES YOU NOW
7 RECALL THAT YOU WERE PRESENT AT THIS MEETING, CORRECT?

8 A. I DO.

9 Q. YOU RECALL THAT YOU, AMONG OTHERS, VOTED IN FAVOR
10 OF THE AMENDMENT, CORRECT?

11 A. I DO.

12 Q. DO YOU RECALL THIS EXCHANGE BETWEEN VICE MAYOR
13 DANDO AND JOHN NICOLETTI OF NORCAL?

14 A. VAGUELY.

15 Q. OKAY. DOES MAYOR GONZALES, WAS MAYOR GONZALES
16 PRESENT FOR THAT EXCHANGE?

17 A. YES.

18 Q. OKAY. AT ANY TIME DURING THE HEARING ON ITEM 7.2,
19 THE NORCAL AMENDMENT, DID MAYOR GONZALES EVER SPEAK UP AND
20 SAY, WHY, IT WAS ME, I WAS THE ONE WHO THOUGHT THE TEAMSTERS
21 SHOULD REPRESENT THESE WORKERS BECAUSE OF ALL THESE VARIOUS
22 REASONS? DID HE EVER SAY ANYTHING LIKE THAT?

23 A. NO.

24 Q. CAN YOU THINK OF ANY REASON WHY, IF THE MAYOR HAD
25 LEGITIMATELY ASKED OR DIRECTED NORCAL TO WORK WITH THE
26 TEAMSTERS, HE WOULD NOT SPEAK UP AND DECLARE THAT FACT
27 DURING THIS COUNCIL MEETING WHEN THE QUESTION WAS PUT BEFORE
28 THE COUNCIL BY VICE MAYOR DANDO?

SUE HERFURTH, CSR #9645

1274

1 A. NO.

2 Q. I TAKE IT THE COUNCIL DID TAKE THE ACTION INDICATED
3 IN THE MINUTES, WHICH WAS TO APPROVE OF THE 11 MILLION
4 DOLLARS IN EXTRA COMPENSATION TO NORCAL, CORRECT?

5 A. RIGHT.

6 Q. NOW, SO I GUESS THE ONLY REMAINING QUESTIONS FOR
7 YOU ARE HOW, IF EVER, DID YOU EVER LEARN THAT SOMEONE FROM
8 THE CITY HAD ASKED NORCAL AND CWS TO SWITCH FROM ILWU
9 WORKERS TO TEAMSTERS?

10 A. I HAVE NO KNOWLEDGE OF THAT BEING THE CASE.

11 Q. SO YOU NEVER LEARNED THAT TO BE THE CASE?

12 A. NO.

13 Q. AND HOW DID YOU FIRST LEARN THAT SOMEONE FROM THE
14 CITY MAY HAVE TOLD NORCAL THAT THE CITY WOULD PAY THE EXTRA
15 LABOR COSTS FOR CWS SWITCHING FROM LONGSHOREMEN TO

16 TEAMSTERS?

17 A. THROUGH THE INVESTIGATOR'S REPORT, MR. GRAHAM, THAT
18 WE HAD HIRED.

19 Q. THAT WOULD HAVE BEEN AFTER THE GRAND JURY REPORT
20 THAT BECAME PUBLIC?

21 A. RIGHT.

22 MR. FINKELSTEIN: I HAVE NO FURTHER QUESTIONS AT
23 THIS TIME. I HAVE TO SEE IF THE JURORS HAVE SOME MORE
24 QUESTIONS, SO JUST BEAR WITH ME FOR A MOMENT.

25 THE WITNESS: DO YOU WANT ME TO LEAVE THE ROOM?

26 MR. FINKELSTEIN: NO. WE HAVE SOME ADDITIONAL
27 QUESTIONS FOR YOU.

28 YOU SEEM TO BE POPULAR.

SUE HERFURTH, CSR #9645

1275

1 LET ME ASK -- SOME OF THESE MAY HAVE BEEN ASKED,
2 BUT PLEASE BEAR WITH US.

3 Q. GIVEN THAT THE 11 MILLION DOLLARS WAS GOING TO BE
4 PAID TO NORCAL, HOW COULD SOMEONE PRESUME THAT THE MRF
5 WORKERS WOULD RECEIVE ANY OF IT?

6 A. I BELIEVE THAT THE ACTUAL ACTION WE TOOK REQUIRED
7 THAT WE LOOK AT THE PAYROLLS TO MAKE SURE THAT WE KNEW HOW
8 MUCH THE WORKERS WERE ACTUALLY MAKING SO THAT IN FACT THEY
9 WOULD BE PAID THAT AMOUNT OF MONEY. AND WE DID LOOK AT THE
10 PAYROLL TO VERIFY THE 11 MILLION DOLLARS.

11 Q. YOU'RE SAYING THE 11 MILLION DOLLARS, IN FACT A
12 LITTLE MORE, BUT THE 11 MILLION DOLLAR NUMBER IS ACTUALLY
13 BASED ON LOOKING AT THE WAGE AND BENEFIT DIFFERENTIALS?

14 A. CORRECT.

15 Q. OKAY. ANOTHER JUROR WANTS TO KNOW, THIS GOES BACK
16 TO THE OCTOBER 10, 2000 COUNCIL MEETING.

17 WE HEARD ROBERTO FLOTTE FROM THE ILWU ADDRESS THE
18 COUNCIL, AND THE JUROR BELIEVES THAT HE SAID TO THE COUNCIL
19 THAT HIS UNION, WHICH WOULD BE REPRESENTING THE CWS MRF
20 WORKERS TO AN EXPANSION OF THE EXISTING COLLECTIVE
21 BARGAINING AGREEMENT, WOULD ACCEPT THE CURRENT WAGES OF THE
22 THEN EXISTING SORTERS. DO YOU RECALL THAT?

23 A. I DON'T RECALL EXACTLY WHAT HE SAID.

24 Q. OKAY. LET ME ASK YOU THIS SORT OF HYPOTHETICALLY
25 IF YOU DON'T RECALL IT.

26 IF MR. FLOTTE HAD INFORMED THE COUNCIL THAT THE
27 ILWU WORKERS CURRENTLY REPRESENTING CWS MRF WORKERS IN
28 OAKLAND AND SACRAMENTO, WAS ANTICIPATING REPRESENTING THEM

SUE HERFURTH, CSR #9645

1276

1 IN SAN JOSE ON THE EXPANSION AGREEMENT, WAS WILLING TO
2 ACCEPT THE THEN CURRENT WAGES, THE JUROR WOULD LIKE TO KNOW
3 WHY IS THERE AN ISSUE ABOUT A UNION CHANGE AND A NEUTRALITY
4 AGREEMENT? CAN YOU EXPLAIN THAT?

5 A. I COULD. IT WOULD BE MY SUPPOSITION ABOUT WHY; I
6 DON'T REALLY KNOW THE ANSWER TO THAT QUESTION.

7 Q. OKAY. CAN YOU TRY?

8 A. ABSOLUTELY. I THINK THE CONTENTION WOULD HAVE BEEN
9 FROM ONE UNION TO THE OTHER THAT, BETWEEN THE UNIONS THAT A
10 NEUTRALITY AGREEMENT WOULD HAVE ALLOWED THE WORKERS AS THEY
11 MOVE OVER TO A NEW LOCATION TO CHOOSE BETWEEN UNIONS. SO

12 THAT WAS THE THE SIGNIFICANCE OF THE NEUTRALITY AGREEMENT.

13 Q. SINCE YOU HAVE A BACKGROUND IN LABOR, CORRECT?

14 A. I DO.

15 Q. LET ME -- HOW DID YOU THINK A NEUTRALITY AGREEMENT
16 WOULD WORK? IN OTHER WORDS, YOU HAVE ONE COMPANY, CWS, WITH
17 ONE OPERATION, RECYCLING, AND THEY JUST HAVE DIFFERENT
18 FACILITIES IN THE BAY AREA.

19 IF A NEUTRALITY AGREEMENT WERE ENTERED INTO, WOULD
20 THE VOTE BE DECIDED BASED ON JUST THE SAN JOSE WORKERS, OR
21 WOULD IT BE ALL OF CWS' S WORKERS?

22 A. IT ONLY WOULD HAVE BEEN FOR THAT ONE SHOP, THAT ONE
23 SITE, ONE LOCATION.

24 Q. THIS IS JUST YOUR UNDERSTANDING. YOU' RE NOT A
25 LAWYER, CORRECT?

26 A. CORRECT. I DID WORK IN THE LABOR MOVEMENT. I WAS
27 UNION --

28 Q. LET ME ASK YOU THIS: SAFEWAY HAS STORES THROUGHOUT

SUE HERFURTH, CSR #9645

1277

1 THE BAY AREA, AND PRESUMABLY THEY HAVE A UNION THAT
2 REPRESENTS THE SAFEWAY CLERKS, CORRECT?

3 A. THAT' S CORRECT.

4 Q. ALBERTSON' S HAS STORES TO A LESSER AMOUNT
5 THROUGHOUT THE BAY AREA WHICH MAY HAVE A DIFFERENT UNION
6 REPRESENTING THOSE WORKERS, CORRECT?

7 A. THEY DO NOT; THEY HAVE THE SAME UNION.

8 Q. LET' S ASSUME THEY HAVE A DIFFERENT UNION. ASSUMING
9 THEY HAD A DIFFERENT UNION, IF SAFEWAY BOUGHT OUT ONE OF THE

10 ALBERTSON' S' S STORES AND CONVERTED IT TO A SAFEWAY STORE,
11 AND ASSUMING THAT THE ALBERTSON' S WORKERS HAD BEEN
12 REPRESENTED BY A DIFFERENT UNION, WOULD THEY GET TO DECIDE
13 AND BE REPRESENTED IN THEIR DEALS WITH SAFEWAY WITH A
14 DIFFERENT UNION FROM THE REST OF SAFEWAY' S WORKERS?

15 A. IT WOULD DEPEND.

16 Q. ON WHAT?

17 A. ON WHAT THE ACTUAL EMPLOYEES WANTED. IT WOULD
18 DEPEND ON WHAT UNIONS WERE INVOLVED, IF THEY DECIDED THAT
19 THEY WANTED TO REPRESENT THOSE WORKERS. PART OF THE REASON
20 THERE' S A NATIONAL LABOR RELATIONS BOARD AND THERE IS A
21 WHOLE SYSTEM WITHIN AFL/CIO TO SORT OUT THESE JURISDICTIONAL
22 DEBATES IS BECAUSE THEY HAPPEN ALL THE TIME, AND YOU' RE
23 CORRECT THAT ARE, THAT THERE ARE SOME CONTRACTS THAT GOVERN
24 WHERE EXPANSION OCCURS AND WHERE IT DOESN' T OCCUR, AND THERE
25 ARE SOME AGREEMENTS BETWEEN UNIONS ABOUT WHAT WORKERS REALLY
26 WANT AND REPRESENT.

27 Q. IS IT YOUR UNDERSTANDING IF AN EMPLOYER HAS AN
28 EXISTING COLLECTIVE BARGAINING AGREEMENT WITH THE UNION THAT

SUE HERFURTH, CSR #9645

1278

1 PROVIDES THAT IF THERE' S EXPANSION IN THE SAME GENERAL AREA
2 FOR THE SAME KIND OF WORK, THE WORKERS WILL BE COVERED BY
3 THE EXISTING CBA?

4 A. THAT' S CORRECT.

5 Q. ISN' T THAT THE SITUATION HERE WITH CWS?

6 A. THAT' S CORRECT.

7 Q. SO THEY HAD A VALID ARGUMENT FOR THE ILWU

8 REPRESENTING THESE WORKERS?

9 A. THAT'S CORRECT.

10 Q. AND IN YOUR VIEW, THE CITY HAD NO LEGITIMATE
11 INTEREST IN GETTING IN THE MIDDLE OF A DISPUTE?

12 A. THAT'S CORRECT. THE ONLY EXCEPTION TO THAT MIGHT
13 HAVE BEEN IF GARBAGE WAS GOING TO PILE UP ON PEOPLE'S
14 STREETS AND THERE WAS SOME ROLE WE PLAYED WITH GOVERNING THE
15 CONTRACTS. YOU'RE CORRECT, THE REASON I WOULD NOT HAVE
16 INTERVENED, EVEN THOUGH THE UNIONS BOTH TALKED TO ME ABOUT
17 IT IS THAT IT'S NOT OUR ROLE.

18 Q. THAT'S WHAT YOU TOLD MR. MORALES PRIOR TO THE FIRST
19 VOTE?

20 A. YES.

21 Q. HE WAS NOT HAPPY ABOUT THAT?

22 A. THAT'S CORRECT. I ALSO TOLD THAT TO THE ILWU, BUT
23 THEY WEREN'T ANGRY.

24 Q. OKAY. AS FAR AS GARBAGE PILING UP ON THE STREET,
25 WE KNOW THAT IN THE FIRST SEVERAL MONTHS OF THE JULY 1, '02
26 START DATE, CWS'S RECYCLING FACILITY IN SAN JOSE WAS NOT
27 ONLINE, RIGHT?

28 A. THAT'S CORRECT.

SUE HERFURTH, CSR #9645

1279

1 Q. GARBAGE DIDN'T PILE UP ON THE STREETS, DID IT?

2 A. I DON'T KNOW WHAT STRATEGIES WERE IN PLACE TO AVOID
3 THAT.

4 Q. YOU DON'T KNOW WHETHER OR NOT NORCAL DIVERTED THE
5 RECYCLING MATERIAL TO A DIFFERENT FACILITY?

6 A. YES. AND I THINK THERE'S A DISTINCTION, AGAIN, AN
7 OPERATIONAL ISSUE AND A LABOR ISSUE. IN TERMS OF GARBAGE
8 PILING UP ON THE STREETS, I MEAN, MEANING THAT THERE ARE
9 CONTINGENCY PLANS YOU WOULD USE, THAT WOULD BE DIFFERENT
10 DEPENDING ON THE CHALLENGE YOU WERE HAVING.

11 Q. LET'S STAY WITH YOUR BACKGROUND IN LABOR. THE
12 DRIVERS WORKING FOR NORCAL WERE REPRESENTED BY TEAMSTERS,
13 RIGHT?

14 A. CORRECT.

15 Q. MRF WORKERS WERE REPRESENTED BY ILWU AT LEAST
16 INITIALLY UNDER THIS EXPANSION, RIGHT?

17 A. CORRECT.

18 Q. CWS WAS A SEPARATE BUSINESS FROM NORCAL, RIGHT?

19 A. CORRECT.

20 Q. TEAMSTERS COULD NOT HAVE LEGALLY STRUCK CWS, ISN'T
21 THAT TRUE, BECAUSE THAT WOULD BE A SECONDARY --

22 A. DEPENDS ON WHAT THEIR CURRENT AGREEMENT IS WITH
23 THEIR EMPLOYER, A.

24 AND B, IRRESPECTIVE OF WHETHER OR NOT THE LAW
25 ALLOWS THEM TO DO IT, THEY COULD STILL DO IT.

26 AND C, DEPENDING ON WHETHER OR NOT THE WORKERS
27 THAT WERE IN CWS CONSIDERED THEMSELVES MEMBERS OF THE
28 TEAMSTERS, THAT MAY HAVE BEEN A LITTLE MORE COMPLICATED.

SUE HERFURTH, CSR #9645

1280

1 THAT'S WHY YOU HAVE THE NLRB AND ALL THE INFRASTRUCTURE
2 WITHIN THE AFL/CIO TO DEAL WITH IT.

3 Q. AND THE EXPERTISE IN DEALING WITH THIS, WHICH THE
Page 65

4 CITY DOESN' T NECESSARILY HAVE?

5 A. THAT' S CORRECT.

6 Q. DO YOU KNOW WHETHER OR NOT THE MAYOR HAS ANY
7 EXPERTISE IN THESE LABOR ISSUES?

8 A. I DO NOT.

9 MR. FINKELSTEIN: ANOTHER QUESTION FROM A JUROR IS
10 IF THIS 11 MILLION DOLLAR ADDITIONAL LABOR COST WOULD HAVE
11 CAUSED NORCAL' S BID TO EXCEED THE NEXT LOWEST BID, WOULD YOU
12 HAVE STILL VOTED TO PAY THE ADDITIONAL LABOR COST?

13 THE WITNESS: NO.

14 MR. FINKELSTEIN: WITH REGARD TO THE AMENDMENT OF
15 THE NORCAL AGREEMENT, DO YOU RECALL THAT CITY ATTORNEY DOYLE
16 GAVE THE OPINION THAT THE ADDITIONAL ITEMS OF STATED
17 CONSIDERATION, THE TEN ADDITIONAL NEIGHBORHOOD CLEANUP BINS,
18 THE GARBAGE COMPOSITION STUDY, AND THE E-WASTE SCRAP
19 PROGRAM, IN HIS VIEW COULD CONSTITUTE LEGAL CONSIDERATION,
20 DID YOU ACCEPT THAT VIEW WHEN YOU MADE YOUR VOTE, DID YOU
21 AGREE OR DISAGREE WITH THE CITY ATTORNEY' S VIEW THAT --

22 A. (NO RESPONSE.)

23 Q. THAT' S A LONG, COMPLICATED QUESTION.

24 DURING THE COUNCIL' S CONSIDERATION OF THE NORCAL AMENDMENT
25 IN '04, THERE WAS AN ISSUE RAISED ABOUT WHETHER OR NOT THIS
26 WOULD CONSTITUTE A GIFT OF PUBLIC FUNDS. DO YOU RECALL
27 THAT?

28 A. YES, I DO.

SUE HERFURTH, CSR #9645

1281

1 Q. THE CITY ATTORNEY OPINED ON THIS SUBJECT AND GAVE
Page 66

2 HIS VIEW OF THE LAW ON THAT SUBJECT, CORRECT?

3 A. HE DID.

4 Q. I THINK HE INDICATED TO THE COUNCIL THAT THESE
5 EXTRA LABOR COSTS COULD NOT BE THE LEGAL CONSIDERATION
6 BECAUSE NORCAL WAS ALREADY OBLIGATED BY THE EXISTING
7 CONTRACT TO DO THAT SERVICE, RIGHT?

8 A. THAT'S CORRECT.

9 Q. SO THE CITY ATTORNEY SUGGESTED SOME ALTERNATE
10 CONSIDERATIONS THAT IN HIS VIEW COULD POSSIBLY CONSTITUTE
11 VALID LEGAL CONSIDERATION; DO YOU RECALL THAT?

12 A. I DO NOT.

13 MR. FINKELSTEIN: ANOTHER JUROR WOULD LIKE TO KNOW
14 WHAT DETERMINES WHO SIGNS ON TO THESE MEMOS THAT WE'VE
15 TALKED ABOUT TO THE COUNCIL, AND IS THERE ANYTHING THAT
16 RESTRICTS THE NUMBER OF COUNCILMEMBERS THAT CAN SIGN ON TO A
17 MEMO.

18 A. THE RESTRICTION IS YOU CAN'T HAVE MORE THAN FIVE
19 PEOPLE, BECAUSE THEN IT WOULD BE A VIOLATION OF THE BROWN
20 ACT, BECAUSE THERE ARE 11 OF US.

21 Q. SIX WOULD BE A QUORUM?

22 A. CORRECT, AND A VIOLATION OF THE BROWN ACT. THANK
23 YOU. THE SECOND ISSUE IS SOMETIMES WHEN I'M SIGNING ON TO A
24 MEMO OR TRYING TO GET SOMEONE ELSE, I WILL CHOOSE SOMEONE
25 WHO REALLY CARES ABOUT THE ISSUE OR WHO I THINK BELIEVES
26 ABSOLUTELY OPPOSITE OF ME, SO I'M GOING TO SEE IF I CAN WOO
27 THEM INTO AGREEING WITH ME.

28 SO IT'S A LITTLE BIT, DEPENDS ON THE TOPIC, AND

1 SOMETIMES PEOPLE HAVE AN AREA OF EXPERTISE. FOR EXAMPLE, IF
2 I'M INTERESTED IN DOING SOMETHING THAT'S ENVIRONMENTAL, I
3 SEEK OUT LINDA LEZOTTE, BECAUSE SHE UNDERSTANDS THE
4 ENVIRONMENT. THERE ARE OTHER COLLEAGUES WHO HAVE AREAS OF
5 EXPERTISE, AND I WILL SEEK THEM OUT.

6 Q. LET ME ASK YOU THIS, BROUGHT UP BY ANOTHER JUROR'S
7 QUESTION. WOULD IT HAVE MATTERED TO YOU AS A
8 COUNCILMEMBER --

9 A. THAT'S COMMERCE. (AIRPLANE FLYING OVER.)

10 Q. WOULD IT HAVE MATTERED TO YOU AS A MEMBER OF THE
11 COUNCIL WHETHER THE INCREASED WAGES AND BENEFITS WERE PAID
12 TO CWS'S MRF WORKERS AS ILWU WORKERS VERSUS TEAMSTER
13 WORKERS?

14 A. NO. THAT WOULDN'T HAVE MADE A DIFFERENCE.

15 Q. SO AS FAR AS WHICH UNION REPRESENTED THE WORKERS,
16 THAT WAS NOT THE ISSUE FOR YOU, CORRECT?

17 A. CORRECT.

18 Q. THE ISSUE FOR YOU WAS THE WAGES AND BENEFITS PAID
19 TO THE WORKERS?

20 A. THAT'S CORRECT.

21 Q. LET ME JUST LOOK AT AN EXHIBIT FOR A MOMENT. LET
22 ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 16 TO THIS
23 PROCEEDING. ARE YOU ABLE TO READ IT FROM WHERE YOU ARE?

24 A. YES.

25 Q. THIS IS AN OCTOBER 9, 2000 LETTER. THAT WOULD BE
26 THE DAY BEFORE THE FIRST COUNCIL VOTE, CORRECT?

27 A. CORRECT.

28 Q. AND IT'S FROM VICTOR DUONG, VICE PRESIDENT OF CWS,

1 CORRECT?

2 A. CORRECT.

3 Q. IT'S TO MAYOR GONZALES, AND IT SAYS THAT CWS WILL
4 PAY SORTERS HIRED PURSUANT TO THE CITY OF SAN JOSE RECYCLE
5 PLUS CONTRACT AWARD, WAGES AND BENEFITS AT LEAST EQUIVALENT
6 TO THOSE PRESENTLY BEING PAID TO WORKERS OCCUPYING THESE
7 POSITIONS UNDER THE CURRENT AGREEMENTS IN SAN JOSE.

8 DO YOU SEE THAT?

9 A. I DO.

10 Q. DID THE MAYOR EVER SHARE THAT LETTER WITH YOU?

11 A. NO.

12 Q. DID HE EVER MENTION ANYTHING ABOUT THAT TO YOU?

13 A. NO.

14 Q. IS THAT INFORMATION THAT YOU WOULD HAVE LIKED TO
15 HAVE HAD BEFORE CASTING THESE VARIOUS VOTES?

16 A. YES.

17 Q. GIVEN THE DATE OF THAT LETTER, OCTOBER 9, DOES THAT
18 SUGGEST TO YOU THAT AT LEAST THE MAYOR KNEW THAT CWS WAS
19 GOING TO PAY HIGHER WAGES AND BENEFITS THAN THOSE SET OUT IN
20 THEIR PROPOSAL PRIOR TO THE FIRST VOTE BY THE CITY COUNCIL?

21 A. IT DOES.

22 Q. NOW, DO YOU RECALL WHETHER OR NOT IN '04 -- WE
23 TALKED ABOUT THE NINE PERCENT RATE HIKE IN '03; DO YOU
24 RECALL THERE BEING A SECOND RATE HIKE IN '04, THE SECOND
25 NINE PERCENT?

26 A. YES.

27 Q. THAT WAS PRIOR TO THE VOTE ON THE AMENDMENT,
28 CORRECT?

SUE HERFURTH, CSR #9645

1284

1 A. CORRECT.

2 Q. AND WHAT DID YOU UNDERSTAND THAT SECOND RATE HIKE
3 TO BE, OR WAS IT AGAIN FOR ADDITIONAL COST RECOVERY?

4 A. YES. AND ONE THING THAT HAS OCCURRED, AND I
5 APOLOGIZE, I DON'T REMEMBER ALL OF MY DATES, BUT YOU MAY
6 RECALL WE WERE STILL GOING THROUGH A PRETTY SIGNIFICANT
7 BUDGET CRUNCH AND DECREASE, SO MY ASSUMPTION WAS THAT WE
8 WERE RELIEVING THE GENERAL FUND AND MAKING THE PROGRAM COST
9 RECOVERY, AND THERE MIGHT HAVE BEEN OTHER THINGS LIKE
10 INCREASED COSTS FOR FUEL AND THINGS.

11 Q. IN OTHER WORDS, THE NORCAL AGREEMENT DID PROVIDE
12 FOR SOME INCREASES IN COMPENSATION BASED UPON CERTAIN
13 OCCURRENCES, CORRECT?

14 A. THAT IS MY ASSUMPTION.

15 Q. CERTAIN COST OF LIVING ADJUSTMENTS?

16 A. CORRECT.

17 Q. THAT'S BEEN WHAT WE HAVE BEEN TALKING ABOUT WITH
18 THE EXTRA LABOR COSTS; THAT'S SOMETHING NOT PROVIDED FOR IN
19 THE ORIGINAL CONTRACT?

20 A. THAT'S CORRECT.

21 Q. SINCE YOU BROUGHT UP THE CONDITION OF THE BUDGET,
22 AT THE TIME THE COUNCIL APPROVED THIS 11 MILLION DOLLAR
23 AGREEMENT TO THE NORCAL AGREEMENT, WHAT WAS THE CONDITION OF
24 THE CITY'S BUDGET?

25 A. WE HAVE MADE CUTS ON AVERAGE OF ABOUT SEVEN OR
26 EIGHT MILLION DOLLARS A YEAR SINCE 2002, 2001. THEY RANGED

27 IN THAT, SIGNIFICANT IN THE GENERAL FUND.

28 Q. IS IT FAIR TO SAY THAT AT THE TIME THE COUNCIL

SUE HERFURTH, CSR #9645

1285

1 APPROVED THE 11 MILLION DOLLAR AMENDMENT TO THE NORCAL
2 AGREEMENT, THE CITY DID NOT HAVE EXCESS REVENUE LYING
3 AROUND?

4 A. THAT'S CORRECT.

5 Q. AS A MATTER OF FACT, THE CITY WAS STILL MAKING
6 ADDITIONAL BUDGET CUTS, CUTTING BACK CERTAIN SERVICES?

7 A. THAT'S CORRECT.

8 MR. FINKELSTEIN: ANY OTHER QUESTIONS? IT'S LIKE
9 A COUNCIL MEETING.

10 I THINK I'M GOING TO HAVE TO NOT ASK THIS
11 QUESTION.

12 LET ME SEE IF I CAN ASK IT A DIFFERENT WAY -- I
13 THINK WE'LL HAVE TO FOREGO THAT QUESTION.

14 ANY OTHER QUESTIONS?

15 COUNCILMEMBER CHAVEZ, I WANT TO THANK YOU FOR
16 COMING BACK THE SECOND TIME.

17 A. THIRD TIME.

18 Q. THIRD TIME. WE HAVE NO MORE QUESTIONS AT THIS
19 TIME, BUT WE ARE NOT EXCUSING WITNESSES UNTIL THE
20 INVESTIGATION IS CONCLUDED, WHICH MEANS IN THE EVENT
21 SOMETHING COMES UP WE LEARN LATER ON AND NEED TO ASK YOU
22 ABOUT, THAT YOU MAY BE CALLED TO RETURN TO GIVE ADDITIONAL
23 TESTIMONY. BUT OTHERWISE, YOU'RE FREE TO GO ABOUT YOUR
24 BUSINESS AND THE FOREPERSON WILL REMIND YOU OF THE

25 ADMONITION, AND THANK YOU VERY MUCH.

26 THE WITNESS: THANK YOU. AND I'M HAPPY TO COME
27 BACK.

28 THE FOREPERSON: WITHOUT READING THE ENTIRE

SUE HERFURTH, CSR #9645

1286

1 ADMONITION, THE BOTTOM LINE IS YOU'RE NOT TO COMMUNICATE
2 ANYTHING THAT YOU HAVE HEARD, SAID, OR SEEN DURING THIS
3 PROCEEDING WITH ANYBODY UNTIL THE COURT OPENS THE
4 TRANSCRIPT. IS THAT UNDERSTOOD?

5 THE WITNESS: YES, SIR. THANK YOU.

6 MR. FINKELSTEIN: THANK YOU VERY MUCH.

7 THE FOREPERSON: WHY DON'T WE RECESS FOR FIVE
8 MINUTES.

9 (A BRIEF RECESS WAS TAKEN.)

10 THE FOREPERSON: LET ME CALL THE GRAND JURY TO
11 ORDER, PLEASE.

12 THE NEXT WITNESS WILL BE COUNCILMEMBER REED, AND I
13 UNDERSTAND THERE IS ONE JUROR WHO WOULD LIKE TO DECLARE
14 KNOWLEDGE OF COUNCILMEMBER REED.

15 A JUROR: I KNOW HIM THROUGH, WE WERE ON THE
16 CHAMBER BOARD TOGETHER. HE'S IN ROTARY CLUB AND I HAVE IN
17 THE PAST SUPPORTED HIM, BUT I THINK I CAN STILL BE
18 OBJECTIVE; HE'S NOT A FRIEND.

19 MR. FINKELSTEIN: WOULD YOU BE ABLE TO ASSESS AND
20 JUDGE COUNCILMEMBER REED'S CREDIBILITY USING THE SAME
21 YARDSTICK YOU WOULD USE AGAINST ANY OTHER WITNESS WHO MAY
22 GIVE TESTIMONY HERE?

23 THE JUROR: I TRULY BELIEVE THAT.
24 MR. FINKELSTEIN: DO YOU THINK YOU COULD BE
25 COMPLETELY FAIR AND IMPARTIAL IN THE MATTER?
26 THE JUROR: YES.
27 THE FOREPERSON: ONE MORE GENERAL DECLARATION. A
28 NUMBER OF JURORS INTERVIEWED COUNCILMEMBER REED WITH REGARD

SUE HERFURTH, CSR #9645

1287

1 TO ANOTHER INQUIRY THE CIVIL GRAND JURY HAS DONE THAT HAS
2 NOTHING TO DO WITH THIS --

3 MR. FINKELSTEIN: THAT'S PERFECTLY PROPER.
4 THERE'S NOTHING WRONG WITH THE JURY'S FUNCTION IN THAT
5 RESPECT.

6 CHARLES RUFUS REED,
7 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
8 AS FOLLOWS:

9 THE WITNESS: I DO.

10 EXAMINATION:

11 BY MR. FINKELSTEIN:

12 Q. CAN YOU PLEASE TELL US YOUR FULL LEGAL NAME.

13 A. CHARLES RUFUS REED.

14 Q. CAN YOU SPELL YOUR NAME FOR THE REPORTER.

15 A. C-H-A-R-L-E-S, R-U-F-U-S, R-E-E-D.

16 Q. BEFORE PROCEEDING FURTHER, I HAVE TO ADVISE YOU OF
17 CERTAIN MATTERS, SO PLEASE LISTEN CAREFULLY.

18 THE GRAND JURY IS INVESTIGATING THE FOLLOWING:

19 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
20 APPROVED THE SELECTION OF NORCAL WASTE SYSTEMS TO PROVIDE

21 FOR THE COLLECTION OF RESIDENTIAL WASTE AND RECYCLEABLE
22 MATERIALS.

23 WHAT SAN JOSE CITY FIRST KNEW ABOUT INCREASED
24 COSTS THAT MIGHT ARISE FROM THE EMPLOYMENT OF TEAMSTERS TO
25 DO THE RECYCLING WORK THROUGH NORCAL' S SUBCONTRACTOR, CWS.

26 WHEN SAN JOSE CITY OFFICIALS FIRST LEARNED ABOUT
27 SUCH INCREASED COSTS.

28 WHY SAN JOSE CITY OFFICIALS GAVE SECRET ASSURANCES

SUE HERFURTH, CSR #9645

1288

1 TO NORCAL THAT ADDITIONAL COSTS ARISING FROM THE USE OF
2 TEAMSTERS BY CWS WHICH WERE NOT INCLUDED IN THE ORIGINAL
3 AGREEMENT WITH NORCAL WOULD NONETHELESS BE PAID FOR BY THE
4 CITY OF SAN JOSE.

5 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
6 APPROVED THE RATE HIKE IN MAY 2003 TO PAY FOR THESE
7 ADDITIONAL COSTS.

8 WHETHER SAN JOSE CITY OFFICIALS MISLED THE PUBLIC
9 ABOUT THE TRUE REASONS FOR THE RATE HIKE.

10 WHY SAN JOSE CITY OFFICIALS RECOMMENDED AND
11 APPROVED A CONTRACT AMENDMENT TO THE NORCAL AGREEMENT IN
12 2004 TO PAY FOR ADDITIONAL COSTS DUE TO THE USE OF
13 TEAMSTERS.

14 AND WHETHER ANYTHING WAS GIVEN OR PROMISED TO CITY
15 OFFICIALS AS AN INDUCEMENT TO TAKE THESE ACTIONS.

16 I HAVE TO ADVISE YOU THAT YOU' RE A SUBJECT OF THE
17 GRAND JURY' S INVESTIGATION, AND BY THAT I MEAN SIMPLY THAT
18 YOU' RE A PERSON WHOSE CONDUCT IS WITHIN THE SCOPE OF THE

19 GRAND JURY' S INVESTIGATION. I DON' T MEAN TO IMPLY ANYTHING
20 SINISTER OR WRONG ABOUT THAT. SINCE YOU ARE A SAN JOSE CITY
21 OFFICIAL AND WE' RE LOOKING AT THE CONDUCT OF CITY OFFICIALS,
22 YOU' RE A SUBJECT OF THE INVESTIGATION.

23 YOU MAY REFUSE TO ANSWER ANY QUESTION IF A
24 TRUTHFUL ANSWER TO THE QUESTION WOULD TEND TO INCRIMINATE
25 YOU. ANYTHING YOU DO OR SAY MAY BE USED AGAINST YOU BY THE
26 GRAND JURY OR IN A SUBSEQUENT LEGAL PROCEEDING.

27 IF YOU HAVE RETAINED COUNSEL, THE GRAND JURY WILL
28 PERMIT YOU A REASONABLE OPPORTUNITY TO STEP OUTSIDE THE

SUE HERFURTH, CSR #9645

1289

1 GRAND JURY ROOM AND CONSULT WITH COUNSEL IF YOU SO DESIRE.

2 DO YOU UNDERSTAND THOSE RIGHTS?

3 A. YES, I DO.

4 Q. WHEN WERE YOU FIRST ELECTED TO THE SAN JOSE CITY
5 COUNCIL?

6 A. IN THE ELECTION OF NOVEMBER OF 2000. I THINK
7 ELECTION DAY WAS NOVEMBER 7.

8 Q. WHEN DID YOUR TERM START?

9 A. I WAS SWORN IN ONE WEEK LATER BECAUSE THE SEAT WAS
10 VACANT, AND THAT MAKES IT NOVEMBER 14 WAS THE DAY I TOOK
11 OFFICE.

12 Q. AND WHEN DOES YOUR CURRENT TERM EXPIRE?

13 A. THREE MORE YEARS -- LESS THAN THREE YEARS.

14 Q. LET ME GO THROUGH SOME BACKGROUND QUESTIONS JUST TO
15 ORIENT YOU VERY QUICKLY. YOU KNOW THAT IN THE YEAR 2000,
16 THE CITY OF SAN JOSE ISSUED A REQUEST FOR PROPOSALS, OR RFP,

17 FOR RECYCLE PLUS SERVICES?
18 A. YES.
19 Q. YOU KNOW THAT NORCAL SUBMITTED A PROPOSAL IN
20 RESPONSE TO THE RFP?
21 A. YES, I DO.
22 Q. I TAKE IT YOU LEARNED THAT THE COUNCIL TOOK A FIRST
23 VOTE ON NORCAL'S PROPOSAL IN OCTOBER OF 2000, PRIOR TO YOUR
24 ELECTION?
25 A. I THINK IT WAS OCTOBER 10 OR 12, BUT THAT WAS
26 BEFORE I TOOK OFFICE.
27 Q. YES. YOU KNOW THAT THE COUNCIL VOTED TO
28 PRELIMINARILY APPROVE NORCAL AS ONE OF THE HAULERS, CORRECT?

SUE HERFURTH, CSR #9645

1290

1 A. YES.
2 Q. AND ALSO ASKED THE CITY AUDITOR TO DO AN AUDIT
3 REVIEW OF NORCAL'S PROPOSAL AND ANOTHER PROPOSAL AS WELL TO
4 LOOK AT THE FINANCIAL CAPABILITY AND FEASIBILITY OF NORCAL,
5 AND ITS OPERATIONAL CAPABILITY, CORRECT?
6 A. THAT'S CORRECT.
7 Q. AND THEN IT CAME BEFORE THE COUNCIL NEXT, I
8 BELIEVE, ON DECEMBER 12 OF 2000 FOR A SECOND AND FINAL VOTE
9 IN THE SELECTION OF HAULERS, RIGHT?
10 A. THAT'S CORRECT.
11 Q. SO AS TO THE VOTE ON THE DECEMBER 12, 2000, BY THEN
12 YOU HAD TAKEN OFFICE AND WERE A VOTING MEMBER OF THE
13 COUNCIL?
14 A. YES.

15 Q. DO YOU RECALL WHAT ACTION THE CITY COUNCIL TOOK ON
16 NORCAL'S PROPOSAL AT THE DECEMBER 12 COUNCIL MEETING?

17 A. THE CITY APPROVED SEVERAL DIFFERENT PROPOSALS IN
18 DIFFERENT AREAS. NORCAL WAS ONE THAT WAS APPROVED. I DON'T
19 REMEMBER IF IT WAS UNANIMOUS OR NOT, BUT I DID VOTE IN FAVOR
20 OF THE STAFF RECOMMENDATION.

21 Q. THE RECOMMENDATION, YOU RECALL, WAS ACTUALLY TO
22 DIRECT STAFF TO NEGOTIATE A FINAL CONTRACT WITH NORCAL AND
23 BRING IT BACK TO THE COUNCIL FOR APPROVAL?

24 A. THAT'S CORRECT. WE DID NOT HAVE A DRAFT CONTRACT
25 IN FRONT OF US.

26 Q. NOW, PRIOR TO THE DECEMBER 12 VOTE, DID EITHER THE
27 MAYOR OR NORCAL EVER SAY ANYTHING TO YOU ABOUT ANY PROMISES
28 OR RECOMMENDATIONS THAT MAY HAVE BEEN MADE TO NORCAL OR CWS?

SUE HERFURTH, CSR #9645

1291

1 A. NO.

2 Q. PRIOR TO THE DECEMBER 12 VOTE, DID EITHER THE MAYOR
3 OR NORCAL SAY ANYTHING TO YOU ABOUT THE MAYOR DIRECTING
4 NORCAL OR CWS TO USE THE TEAMSTERS?

5 A. NO.

6 Q. PRIOR TO THE DECEMBER 12 VOTE, DID EITHER THE MAYOR
7 OR NORCAL SAY ANYTHING TO YOU ABOUT THE CITY NEEDING TO
8 REIMBURSE NORCAL OR CWS FOR ADDITIONAL LABOR COSTS THAT WERE
9 NOT REFLECTED IN THE NORCAL PROPOSAL?

10 A. NO.

11 Q. HAD EITHER THE MAYOR OR NORCAL COMMUNICATED THIS
12 INFORMATION TO YOU, PRIOR TO THE DECEMBER 12 VOTE, WOULD

13 THAT HAVE BEEN INFORMATION THAT YOU WOULD HAVE CONSIDERED
14 VERY IMPORTANT IN YOUR DECISION ON HOW TO VOTE?

15 A. YES, IT WOULD HAVE BEEN.

16 Q. WHY IS THAT?

17 A. FIRST, IT WOULD HAVE BEEN AN UNFAIR ELEMENT IN THE
18 WHOLE RFP PROCESS, BECAUSE THE CITY WENT TO GREAT LENGTHS TO
19 STRUCTURE THIS RFP AND MAKE IT FAIR TO EVERYBODY. HAVING
20 SOME SORT OF A SIDE DEAL OR UNDERSTANDING WITH ONE OF THE
21 BIDDERS WOULD HAVE BEEN UNFAIR TO EVERYBODY, SO IT WOULD
22 HAVE TAINTED THE PROCESS IN SOME WAY.

23 Q. DID YOU SPEAK WITH THE MAYOR PERSONALLY PRIOR TO
24 THE DECEMBER 12 VOTE ABOUT THE SUBJECT OF SELECTION OF
25 NORCAL' S HAULERS?

26 A. I DON' T THINK SO, BUT I CAN' T BE SURE; I DID MEET
27 WITH THE MAYOR ON A REGULAR BASIS, AND I DON' T REMEMBER ANY
28 CONVERSATIONS I HAD WITH HIM ABOUT THAT OR ANY OTHER --

SUE HERFURTH, CSR #9645

1292

1 Q. WHAT ABOUT NORCAL, PRIOR TO YOUR DECEMBER 12, 2000
2 VOTE, DID YOU SPEAK WITH ANY REPRESENTATIVES OF NORCAL ABOUT
3 THE SELECTION OF RECYCLE PLUS CONTRACTORS?

4 A. AGAIN, I DON' T THINK SO, BUT I HAVEN' T BEEN ABLE TO
5 FIND RECORDS THAT TELL ME ONE WAY OR THE OTHER WHETHER OR
6 NOT THEY CALLED ME OR SAID SOMETHING TO ME DURING THE
7 APPROVAL PROCESS.

8 Q. DO YOU RECALL THAT THE FOLLOWING MARCH 27, 2001,
9 THE COUNCIL DID VOTE ON A RECYCLE PLUS AGREEMENT WITH
10 NORCAL?

11 A. YES.

12 Q. PRIOR TO THE TIME THAT YOU CAST YOUR VOTE ON THAT
13 AGREEMENT, DID EITHER THE MAYOR OR NORCAL SAY ANYTHING ABOUT
14 ANY PROMISES OR REPRESENTATIONS THAT MAY HAVE BEEN MADE TO
15 NORCAL OR CWS?

16 A. NO.

17 Q. PRIOR TO CASTING YOUR VOTE ON MARCH 27, 2001, DID
18 EITHER THE MAYOR OR NORCAL SAY ANYTHING ABOUT THE MAYOR
19 DIRECTING NORCAL OR CWS TO USE TEAMSTERS?

20 A. NO.

21 Q. PRIOR TO CASTING YOUR VOTE ON MARCH 27, 2001, DID
22 EITHER THE MAYOR OR NORCAL SAY ANYTHING ABOUT THE CITY
23 NEEDING TO REIMBURSE NORCAL OR CWS AT SOME LATER DATE FOR
24 ADDITIONAL LABOR COSTS THAT WERE NOT REFLECTED IN THE
25 WRITTEN PROPOSAL?

26 A. NO.

27 Q. WOULD THOSE HAVE BEEN IMPORTANT FACTS FOR YOU TO
28 HAVE KNOWN PRIOR TO CASTING YOUR VOTE?

SUE HERFURTH, CSR #9645

1293

1 A. YES.

2 Q. AND WOULD THAT BE FOR THE SAME REASONS YOU TOLD US
3 ALREADY?

4 A. THAT AND OTHERS.

5 Q. WHAT OTHER REASONS?

6 A. WELL, MARCH 27 OF 2001 WE HAD A CONTRACT IN FRONT
7 OF US, AND IT WAS CLEAR, I THOUGHT, THAT IT SAID NO MORE
8 MONEY.

9 Q. DO YOU RECALL THAT ONE OF THE PROVISIONS IN THE
10 CONTRACT WAS THAT THE CONTRACTOR WOULD NOT RECEIVE
11 ADDITIONAL COMPENSATION BASED ON INCREASED LABOR COSTS OTHER
12 THAN CERTAIN INCREASES CALLED FOR IN THE CONTRACT?

13 A. THAT'S CORRECT. SO THAT WOULD HAVE BEEN
14 INCONSISTENT WITH THE CONTRACT, AND I CERTAINLY WOULD HAVE
15 WANTED TO HAVE TALKED ABOUT IT BEFORE I VOTED ON THE
16 CONTRACT.

17 Q. NOW, WAS THERE ANYTHING IN THE RFP OR THE NORCAL
18 AGREEMENT THAT REQUIRED CWS TO USE THE TEAMSTERS AS OPPOSED
19 TO ANY OTHER UNION?

20 A. I DON'T THINK SO.

21 Q. OKAY.

22 A. I DON'T REMEMBER ALL THE DETAILS OF THE CONTRACT,
23 THERE WERE LOTS OF REQUIREMENTS, BUT I'M FAIRLY CERTAIN THAT
24 CWS HAD MET ALL THOSE REQUIREMENTS WITH THEIR EXISTING WORK
25 FORCE AND THEIR EXISTING ARRANGEMENT.

26 Q. LET'S MOVE AHEAD TO MAY 27, 2003. DO YOU RECALL AT
27 THAT TIME THE CITY COUNCIL HAD BEFORE IT THE QUESTION OF
28 WHETHER OR NOT TO RAISE THE RECYCLE PLUS RATES AN ADDITIONAL

SUE HERFURTH, CSR #9645

1294

1 NINE PERCENT?

2 A. I DO.

3 Q. BEAR WITH ME FOR A MOMENT. LET ME SHOW YOU EXHIBIT
4 90, WHICH IS A CERTIFIED COPY OF THE COUNCIL MINUTES FROM
5 MAY 27, 2003, AND LET ME DIRECT YOUR ATTENTION TO ITEM 7.1.

6 A. YES, I HAVE IT.

7 Q. SO IF WE TURN TO ITEM 7.1 IN THE MINUTES, IT STARTS
8 OUT BY TALKING ABOUT VARIOUS DOCUMENTS THAT ARE FILED IN
9 CONNECTION WITH THAT ITEM, CORRECT?

10 A. THAT'S CORRECT.

11 Q. AND IT SORT OF, IT'S MINUTES OF WHAT TRANSPIRED AT
12 THE COUNCIL MEETING, CORRECT?

13 A. RIGHT.

14 Q. WAS THERE ANYTHING IN ANY OF THE DOCUMENTS FILED IN
15 CONNECTION WITH THIS ITEM AND TRANSMITTED TO THE COUNCIL OR
16 DURING THE DISCUSSION ON THIS RATE HIKE VOTE THAT DISCLOSED
17 TO YOU IN ANY WAY, SHAPE, OR FORM THAT THE PURPOSE OF THIS
18 RATE HIKE WAS TO BUILD UP THE RESERVE TO PAY NORCAL
19 ADDITIONAL MONEY FOR INCREASED LABOR COSTS?

20 A. I REMEMBER NO SUCH DOCUMENTS.

21 Q. WHAT ABOUT DISCUSSION AT THE COUNCIL MEETING
22 ITSELF, DO YOU RECALL ANY DISCUSSION THAT SUGGESTED TO YOU
23 THAT THAT WAS THE CASE, THAT THIS NINE PERCENT RATE HIKE WAS
24 FOR THE PURPOSE OF BUILDING UP ADDITIONAL MONEY TO ACTUALLY
25 PAY NORCAL ADDITIONAL MONEY FOR INCREASED LABOR COSTS?

26 A. I DON'T THINK THAT WAS DISCUSSED DIRECTLY. I THINK
27 THERE WERE A COUPLE OF QUESTIONS ASKED BY COUNCILMEMBER
28 LEZOTTE AND VICE MAYOR DANDO THAT SHOULD HAVE ELICITED A

SUE HERFURTH, CSR #9645

1295

1 RESPONSE TO THAT, BUT DID NOT.

2 Q. WHAT QUESTIONS WERE THOSE? CAN YOU POINT THEM OUT
3 IN THE MINUTES?

4 A. IN THE PARAGRAPH CAPTIONED DISCUSSION/ACTION, IT

5 RELATES THE QUESTION TO COUNCILMEMBER LEZOTTE ASKED STAFF
6 THAT. COUNCILMEMBER LAZOTTE ASKED WHERE RECYCLE PLUS
7 INCREASED MONEY WILL GO, AND OTHER QUESTIONS.

8 Q. WHAT -- WHO DID SHE ASK THAT QUESTION OF?

9 A. I'M NOT SURE WHO HAD THE PODIUM AT THAT TIME, IT
10 WAS PROBABLY CARL MOSHER, THE DIRECTOR OF ESD, AND IT WAS
11 THE STAFF WHO WOULD HAVE PUT TOGETHER THE STAFF REPORTS, BUT
12 THE CITY MANAGER WAS OBVIOUSLY SITTING AT THE DAIS AND THERE
13 ARE A LOT OF OTHER PEOPLE WHO COULD HAVE ANSWERED THE
14 QUESTION.

15 Q. WHAT DID YOU UNDERSTAND THE PURPOSE OF THIS NINE
16 PERCENT RATE HIKE TO BE?

17 A. WE HAVE A STAFF REPORT THAT PENCILLED OUT WHAT IT
18 WAS GOING TO GO FOR. THAT'S WHAT I UNDERSTOOD WHAT IT WAS
19 GOING TO BE USED FOR.

20 Q. THAT WAS TO ESSENTIALLY INCREASE COST RECOVERY?

21 A. ONE OF THE THINGS I WAS INTERESTED IN IS THAT WE
22 GET COST RECOVERY, BECAUSE THE GENERAL FUND HAD BEEN
23 SUBSIDIZING THIS PARTICULAR FUND SINCE ITS BEGINNING. IT
24 WAS MY UNDERSTANDING THIS WOULD PUSH US TO COST RECOVERY,
25 MAYBE NOT 100 PERCENT, BUT CLOSE.

26 Q. POSSIBLY BUILD UP RESERVE FOR CONTINGENCIES?

27 A. I WAS CONCERNED ABOUT RESERVES. IF YOU LOOK AT THE
28 HISTORY OF THE RESERVES IN THAT FUND, IT NEEDED SOME

SUE HERFURTH, CSR #9645

1296

1 INCREASE.

2 Q. WOULD IT BE FAIR AND ACCURATE TO SAY THEN THAT AS

3 FAR AS YOU KNEW AND BELIEVED, YOU WERE VOTING FOR A NINE
4 PERCENT RATE INCREASE TO INCREASE COST RECOVERY AND DECREASE
5 DEPENDENCE ON THE GENERAL FUND, AND ALSO TO BUILD UP A
6 CONTINGENCY RESERVE?

7 A. THAT'S RIGHT. I THINK THERE WAS SOMETHING ELSE ON
8 THE STAFF REPORT THAT THEY IDENTIFIED THEY NEEDED THE MONEY
9 FOR, BUT IT DEFINITELY WAS NOT INCREASED LABOR COSTS FOR THE
10 TEAMSTERS' CONTRACT.

11 Q. LET ME ASK YOU THIS: TYPICALLY, THESE RATE HIKES
12 COME AT THE END OF THE YEAR; ISN'T THAT RIGHT, IF YOU KNOW?

13 A. YEAH, THEY USUALLY RUN ON A FISCAL YEAR BASIS.

14 Q. HAD THERE BEEN ONE THE PRIOR DECEMBER OF THREE OR
15 FOUR PERCENT?

16 A. THAT I DON'T REMEMBER.

17 Q. NOW, WAS THE COUNCIL VOTING ON ONE NINE PERCENT
18 RATE HIKE OR TWO SUCCESSIVE NINE PERCENT RATE HIKES?

19 A. I THINK WE HAD TYPICALLY DONE IT FOR MULTIPLE
20 YEARS, AT LEAST IF NOT APPROVING THE HIKE BUT TO TELEGRAPH
21 WHERE WE WERE GOING.

22 I THINK AT ONE TIME WE HAD THREE AND A HALF OR
23 FOUR PERCENT A YEAR, I KIND OF LOST TRACK, BUT THAT WOULD
24 NOT BE UNUSUAL FOR US TO TALK ABOUT MULTIPLE YEARS.

25 Q. NOW, IN CONNECTION WITH THESE RATE HIKES,
26 PROPOSITION 218 REQUIRES A NOTICE GO OUT TO THE PROPERTY
27 OWNERS AFFECTED BY THE SERVICE?

28 A. THAT'S RIGHT.

SUE HERFURTH, CSR #9645

- 1 Q. THEY HAVE A RIGHT TO PROTEST THE RATE HIKE?
- 2 A. THAT IS CORRECT.
- 3 Q. IF A MAJORITY OF OWNERS PROTEST THE RATE HIKE, THE
- 4 RATE HIKE DOES NOT GET PASSED, CORRECT?
- 5 A. YOU GOT ME ON THAT ONE. THAT'S NEVER HAPPENED, SO
- 6 I DON'T KNOW WHAT HAPPENS.
- 7 Q. IS THERE ANYTHING YOU CAN RECALL IN THE PROP 218
- 8 NOTICE THAT WENT OUT TO PROPERTY OWNERS THAT WOULD HAVE
- 9 ALERTED PROPERTY OWNERS IN ANY WAY, SHAPE, OR FORM THAT THIS
- 10 MONEY WAS GOING TO BE USED THE FOLLOWING YEAR TO PAY
- 11 ADDITIONAL MONEY TO NORCAL FOR INCREASED LABOR COSTS?
- 12 A. NO, I DON'T THINK THE NOTICE DID ANYTHING ALONG
- 13 THOSE LINES.
- 14 Q. YOU ATTENDED THE MAY 27, 2003 VOTE ON THE RATE
- 15 HIKE?
- 16 A. YES.
- 17 Q. DID MAYOR GONZALES ATTEND THE VOTE?
- 18 A. THAT I DON'T KNOW.
- 19 Q. WHY DON'T YOU LOOK AT THE MINUTES AND SEE IF THAT
- 20 REFLECTS WHETHER HE WAS THERE.
- 21 A. IT INDICATES THAT MAYOR GONZALES WAS PRESENT.
- 22 Q. OKAY. AT THIS COUNCIL MEETING AND PRIOR TO YOUR
- 23 VOTE, DID EITHER THE MAYOR OR NORCAL SAY ANYTHING ABOUT ANY
- 24 PROMISES OR REPRESENTATIONS THAT MAY HAVE BEEN MADE TO
- 25 NORCAL OR CWS?
- 26 A. NOT THE MAYOR OR NORCAL, BUT I HAVE HAD
- 27 CONVERSATIONS WITH OTHERS WHO TALKED ABOUT IT.
- 28 Q. WHO?

SUE HERFURTH, CSR #9645

1 A. UH -- THE PEOPLE FROM CWS.

2 Q. WHO IN PARTICULAR?

3 A. IT WOULD HAVE BEEN EITHER VICTOR OR DAVID DUONG OR
4 PERHAPS THEIR CONSULTANTS. SEAN KALI -R-A-I.

5 Q. WHEN DO YOU THINK THESE CONVERSATIONS MAY HAVE
6 TAKEN PLACE?

7 A. SOMEWHERE, I BELIEVE BEFORE MAY 27 OF '03.

8 Q. WOULD IT HAVE BEEN IN MAY OF '03 SOMETIME?

9 A. I THINK IT WAS PROBABLY SOMEWHERE IN LATE '02 TO
10 EARLY '03, BECAUSE THERE WAS A FIGHT BETWEEN CALIFORNIA
11 WASTE SOLUTIONS AND NORCAL OVER REIMBURSEMENT FOR COSTS THAT
12 CWS HAD INCURRED THAT THEY THOUGHT NORCAL WAS GOING TO PAY
13 THEM. AND ONE OF THOSE COSTS THAT THEY WERE SUPPOSED TO PAY
14 WAS THE INCREASED COST WITH THE TEAMSTERS IS MY
15 RECOLLECTION.

16 Q. AND SO --

17 A. OH, I COULD BE OFF ON THE DATE, BUT I THINK IT WAS
18 BEFORE THIS.

19 Q. SO YOUR BEST RECOLLECTION IS IT WAS THE END OF '02,
20 BEGINNING OF '03?

21 A. I THINK SO.

22 Q. HOW DO YOU KEEP TRACK OF YOUR MEETINGS AND
23 APPOINTMENTS?

24 A. I HAVE A CALENDAR. THAT IS BASICALLY OUTLOOK.

25 Q. IS IT ON A CITY COMPUTER?

26 A. YES.

27 Q. AND HAS ANY SEARCH BEEN CONDUCTED FOR ANY RECORDS
28 THAT WOULD SHOW THE DATES OF THIS MEETING OR MEETINGS?

1 A. YES.

2 Q. HAVE YOU BEEN ABLE TO LOCATE ANY SUCH RECORDS?

3 A. YES.

4 Q. OKAY. AND HAS THAT BEEN PRODUCED TO US; DO YOU
5 KNOW?

6 A. YES, THIS MORNING.

7 MR. FINKELSTEIN: OKAY. LET ME JUST STEP OUTSIDE.
8 DON'T SAY ANYTHING; I JUST WANT TO CONFER WITH SOMEBODY
9 OUTSIDE, AND I WILL BE RIGHT BACK.

10 THE FOREPERSON: OKAY.

11 BY MR. FINKELSTEIN:

12 Q. WHY IS IT THAT REPRESENTATIVES -- FIRST OF ALL,
13 TONY ARREOLA AND SEAN KALI-RAI WERE LOBBYISTS EMPLOYED ON
14 BEHALF OF CWS?

15 A. YES.

16 Q. WHY IS IT THEY WERE MEETING WITH YOU?

17 A. CWS ORIGINALLY STARTED OUT WITH A FACILITY TO DO
18 THEIR RECYCLING. THEY HAD A BIG PLACE TO HANDLE ALL
19 RECYCLABLES IN DISTRICT 7.

20 Q. THE BURKE STREET FACILITY?

21 A. RIGHT. AND THAT PROVED NOT TO BE WORKABLE, SO IN
22 SOMETIME IN EARLY 2002 THEY CONTACTED ME ABOUT THE
23 POSSIBILITY OF DOING A FACILITY IN MY COUNCIL DISTRICT ON
24 TIMOTHY DRIVE, WHICH IS WHERE THEY ULTIMATELY ENDED UP.
25 THAT'S WHEN I FIRST HAD CONVERSATIONS WITH ANY OF THOSE
26 PEOPLE.

27 Q. WHEN DID YOU FIRST HAVE CONVERSATIONS WITH EITHER
28 CWS OR CWS LOBBYISTS REPRESENTATIVES ABOUT NORCAL

SUE HERFURTH, CSR #9645

1300

1 REIMBURSING CWS FOR THE EXTRA COST OF USING TEAMSTERS?

2 A. I THINK IT WAS AFTER 2002, BECAUSE THERE WAS A TIME
3 PERIOD WHERE IT WAS ALL FOCUSED ON PERMITTING THE OPERATION.
4 THEN AFTER THEY GOT INTO OPERATION, AFTER THE CONTRACT
5 STARTED, CWS AND NORCAL STARTED ARGUING ABOUT THE LABOR
6 COSTS.

7 Q. SO IF I RECALL CORRECTLY, THE STARTING DATE FOR
8 OPERATIONS OF THE CONTRACT WAS JULY 1, '02, CORRECT?

9 A. I THINK THAT WAS THE START DATE.

10 Q. THE CONTRACT WAS AWARDED END OF 2000, BEGINNING
11 OF '01, CORRECT?

12 A. YES. MARCH OF '01.

13 Q. WAS THE CONTRACT SIGNED?

14 A. YES.

15 Q. AND WORK WAS SUPPOSED TO START JULY 1, '02, THAT
16 WAS THE TRANSITION DATE?

17 A. YES.

18 Q. YOU THINK IT WAS SOME TIME AFTER JULY 1, '02
19 THAT -- YOU HAVE TO HAVE LET ME FINISH. SOMETIME AFTER JULY
20 1, '02 WHEN CWS AND THEIR LOBBYIST SPOKE TO YOU ABOUT NORCAL
21 NOT PAYING CWS FOR THESE EXTRA LABOR COSTS?

22 A. THAT'S CORRECT.

23 Q. AND DO YOU HAVE ANY WAY OF FIXING THAT DATE MORE
24 PRECISELY OTHER THAN JULY 1 OF '02?

25 A. I DO.

26 Q. WHAT WOULD THAT BE?

27 A. THERE ARE SOME DOCUMENTS THAT I PRODUCED IN WHICH I
28 KNOW THAT THERE'S A REFERENCE TO THE INCREASED COSTS BECAUSE

SUE HERFURTH, CSR #9645

1301

1 THERE WAS A \$700,000 FIGURE THAT WAS OUTSTANDING BETWEEN THE
2 TWO OF THEM; IT'S IN ONE OF THE LETTERS FROM CALIFORNIA
3 WASTE SOLUTIONS. I KNOW IT WAS BY THAT DATE BECAUSE I THINK
4 I HAD HEARD ABOUT IT BEFORE THEN.

5 Q. I'M TRYING TO FIX THE EARLIEST DATE. YOU KNOW IT
6 WAS AT LEAST AS OF A CERTAIN DATE, BUT IT COULD HAVE BEEN
7 EARLIER?

8 A. CORRECT.

9 Q. I'M TRYING TO FIND OUT EARLIEST DATE, BUT WE KNOW
10 FOR SURE THAT IT WAS AFTER JULY 1, '02?

11 A. YES. I BELIEVE IT WAS AFTER JULY 1 OF '02.

12 Q. AND WHAT EXACTLY DID CWS TELL YOU AT THIS MEETING?

13 A. I DON'T REMEMBER WHAT MEETING OR EXACTLY WHAT THEY
14 SAID, BUT IT WAS IN THE CONTEXT OF THEIR ARGUMENT WITH
15 NORCAL OVER REIMBURSEMENT FOR EXPENSES. AND THERE WERE
16 SEVERAL ELEMENTS TO THE EXPENSES THAT THEY WERE FIGHTING
17 ABOUT, AND ONE WAS THE INCREASED LABOR COSTS; I JUST
18 REMEMBER THEM SAYING NORCAL TOLD CWS THAT THEY WEREN'T GOING
19 TO PAY THEM THAT UNTIL NORCAL GOT IT FROM THE CITY. THAT'S
20 THE FIRST THING I CAN REMEMBER.

21 Q. AND DID ANYONE SAY ANYTHING ABOUT THE CITY
22 REQUIRING NORCAL OR CWS TO INCUR THESE INCREASED LABOR COSTS
23 BY USING TEAMSTERS INSTEAD OF LONGSHOREMEN?

24 A. I DON'T REMEMBER THAT AS PART OF THE CONVERSATION.

25 Q. DID YOU ASK CWS OR THEIR LOBBYISTS WHY THEY WERE
26 BRINGING A REIMBURSEMENT ISSUE TO YOUR ATTENTION SINCE THAT
27 WAS A MATTER BETWEEN NORCAL AND CWS?

28 A. CWS WAS CONCERNED ABOUT NOT BEING ABLE TO PERFORM.

SUE HERFURTH, CSR #9645

1302

1 Q. I SEE.

2 A. THE COSTS, THEY WERE INCURRING COSTS AND THEY WERE
3 NOT GOING TO BE ABLE TO DO THE DEAL.

4 Q. THEIR POINT WAS THE CITY SHOULD BE CONCERNED
5 BECAUSE IF NORCAL DOESN'T AGREE TO PAY CWS, CWS MAY NOT BE
6 ABLE TO FULFILL ITS OBLIGATION UNDER THE CONTRACT?

7 A. THAT'S CORRECT.

8 Q. DID YOU SPEAK TO THE MAYOR OR ANY OTHER
9 COUNCILMEMBERS ABOUT THIS SUBJECT?

10 A. NO.

11 Q. HOW DID YOU LEAVE THINGS WITH CWS AND THEIR
12 LOBBYISTS?

13 A. I DIDN'T THINK THAT WAS AN ISSUE FOR ME, WHETHER OR
14 NOT THEY HAD A DEAL WITH NORCAL AND CWS; I THOUGHT IT WAS
15 THEIR PROBLEM. I TOLD THEM, GET A LAWYER, IT'S A CONTRACT
16 THING. YOU HAVE A CONTRACT, ENFORCE IT; IT'S NOT THE CITY'S
17 DEAL.

18 Q. OKAY. SO AFTER THE RATE HIKE IN 2003, IN 2004 THE
19 CITY WAS ASKED TO CONSIDER AMENDING THE AGREEMENT WITH
20 NORCAL TO PROVIDE FOR AN ADDITIONAL 11 MILLION DOLLARS TO
21 NORCAL FOR INCREASED LABOR COSTS, CORRECT?

22 A. YES.

23 Q. OKAY. LET'S LOOK AT SOME DOCUMENTS.
24 A. BEFORE YOU MOVE ON, I NEED TO ADD A COMMENT ON THE
25 LAST QUESTION. YOU DID ASK ME ABOUT HOW DID I LEAVE THINGS
26 WITH CWS. THE TOPIC CAME UP MORE THAN ONCE.
27 Q. THEY CAME BACK FOR MORE DISCUSSIONS?
28 A. YES.

SUE HERFURTH, CSR #9645

1303

1 Q. DID THEY SAY ANYTHING NEW ON THESE LATER
2 DISCUSSIONS OTHER THAN WHAT THEY SAID BEFORE?
3 A. JUST THAT IT WAS GETTING WORSE, AND NORCAL OWED
4 THEM MORE MONEY, AND THEY WERE CONCERNED ABOUT GOING OUT OF
5 BUSINESS.
6 Q. DID THEY SAY ANYTHING ABOUT THE CITY BEING
7 RESPONSIBLE IN SOME PART FOR THIS PROBLEM BY INSISTING CWS
8 SWITCH FROM LONGSHOREMEN TO TEAMSTERS?
9 A. NO.
10 Q. SO LET'S LOOK AT EXHIBIT 99. I HAVE IT UP ON THE
11 SCREEN. CAN YOU SEE IT FROM THERE?
12 A. I CAN SEE IT. I'M GOOD AT DISTANCE, NOT SO GOOD AT
13 CLOSE.
14 Q. I'M THE OPPOSITE. SO EXHIBIT 99 IS A CERTIFIED
15 COPY OF THE SEPTEMBER 16, 2004 MEMO TO THE CITY COUNCIL FROM
16 MAYOR RON GONZALES, VICE MAYOR DANDO, AND COUNCILMEMBER
17 CHAVEZ, CORRECT?
18 A. YES.
19 Q. AND THIS WAS A MEMO THAT WAS CIRCULATED PRIOR TO
20 THE SEPTEMBER 21, 2004 COUNCIL VOTE ON THE NORCAL AMENDMENT;

21 IS THAT CORRECT?

22 A. YES.

23 Q. DO YOU RECOGNIZE ANY OF THE SIGNATURES ON THE MEMO?

24 A. MAYOR GONZALES, COUNCILMEMBER DANDO, AND

25 COUNCILMEMBER CHAVEZ ALL HAVE SIGNATURES.

26 Q. WAS THIS MEMO SUBMITTED TO THE CITY COUNCIL

27 FORMALLY?

28 A. YES, I RECEIVED IT.

SUE HERFURTH, CSR #9645

1304

1 Q. AND DID IT BECOME PART OF THE OFFICIAL RECORD OF
2 THE SEPTEMBER 21, 2004 COUNCIL PROCEEDINGS?

3 A. IT SHOULD BE.

4 Q. WE'LL LOOK AT THE MINUTES IN A MOMENT TO SEE IF
5 THAT WAS A DOCUMENT FILED. IS THERE ANYTHING IN THIS MEMO
6 ABOUT ANY PROMISES OR REPRESENTATIONS THAT MAY HAVE BEEN
7 MADE TO NORCAL OR CWS?

8 A. NO, BUT THE MEMO IS MISLEADING.

9 Q. OKAY. AND IN WHAT WAY DO YOU THINK THE MEMO IS
10 MISLEADING?

11 A. IT DOESN'T TELL US HOW MUCH MONEY IS ON THE TABLE.
12 IT IS MISLEADING IN THAT THE BIGGEST ITEM IN THE DISCUSSION
13 WAS THE ADDITIONAL LABOR COSTS; THAT IS KIND OF BURIED IN
14 THERE ALONG WITH THESE OTHER ITEMS. THE CONTRIBUTION FOR
15 RECYCLE STUDY, E-SCRAP COLLECTION PROGRAM, AND ADDITIONAL
16 BINS COLLECTIVELY ARE PROBABLY NOT EVEN 10 PERCENT OF THE
17 ADDITIONAL LABOR COSTS.

18 Q. SO I THINK WE'RE GETTING AHEAD OF OURSELVES. WE

19 KNOW THAT ULTIMATELY THE COUNCIL DID APPROVE THIS AMENDMENT
20 AND ENTERED INTO A FORMAL WRITTEN AMENDMENT WITH NORCAL,
21 CORRECT?

22 A. THAT'S RIGHT.

23 Q. AND THE STATED CONSIDERATION IN THE AMENDMENT IS
24 TEN ADDITIONAL NEIGHBORHOOD CLEANUP BINS, A GARBAGE
25 COMPOSITION STUDY, AND AN E-WASTE SCRAP PROGRAM?

26 A. THAT'S CORRECT.

27 Q. NOTHING ABOUT COMPENSATING NORCAL FOR ADDITIONAL
28 LABOR COSTS, CORRECT?

SUE HERFURTH, CSR #9645

1305

1 A. WELL, THERE'S A REFERENCE TO ADDITIONAL LABOR COSTS
2 IN THE MEMO.

3 Q. I'M TALKING ABOUT AN AGREEMENT NOW. YOU DON'T
4 RECALL --

5 A. I'M SORRY. I'M NOT TRACKING YOU.

6 Q. OKAY. LET ME DIRECT YOUR ATTENTION TO PAGE TWO OF
7 THE MEMO. LET'S STAY WITH THE MEMO. I MAY HAVE JUMPED
8 AHEAD HERE.

9 ON PAGE TWO THERE'S A PARAGRAPH THAT SAYS:

10 AFTER COUNCIL APPROVAL, THE MAYOR'S OFFICE
11 LEARNED THAT THE WORKERS TO BE RETAINED FROM THE
12 WASTE MANAGEMENT WOULD BE EXPECTED TO CHANGE
13 UNIONS.

14 DO YOU SEE THAT?

15 A. YES.

16 Q. WHAT DID YOU UNDERSTAND THAT REFERENCE TO BE, AFTER
Page 92

17 COUNCIL APPROVAL, WHICH COUNCIL APPROVAL?

18 A. IT WASN'T CLEAR WITHOUT SEEING THE REST OF IT; I
19 DON'T KNOW IF THERE'S A REFERENCE. I THINK IT WAS THE
20 APPROVAL OF OCTOBER 10, ALTHOUGH WE ALSO APPROVED IT ON TWO
21 OTHER DATES.

22 Q. ON DECEMBER 12 AND MARCH 27?

23 A. THAT'S CORRECT.

24 Q. SO DID YOU CONSTRUE "AFTER COUNCIL APPROVAL" TO
25 MEAN THE AFTER THE ORIGINAL SELECTION OF NORCAL ON ONE OF
26 THOSE DATES?

27 A. I THOUGHT IT WAS A REFERENCE TO THE OCTOBER 10
28 APPROVAL.

SUE HERFURTH, CSR #9645

1306

1 Q. OKAY. IT GOES ON TO SAY:

2 TO CONFORM TO COUNCIL DIRECTION, THE MAYOR'S
3 OFFICE CONVENED A MEETING BETWEEN NORCAL AND THE
4 LEADERSHIP OF THE TEAMSTER'S LOCAL AND A
5 REPRESENTATIVE OF THE CENTRAL LABOR COUNCIL TO
6 IDENTIFY SOLUTIONS TO THE JURISDICTIONAL ISSUE.

7 DO YOU SEE THAT?

8 A. YES.

9 Q. WHAT COUNCIL DIRECTION DID YOU UNDERSTAND THE MAYOR
10 TO BE REFERRING TO IN THIS MEMO? DID THE COUNCIL, TO YOUR
11 KNOWLEDGE, EVER DIRECT THE MAYOR TO CONVENE SUCH A MEETING?

12 A. NO. I DON'T KNOW THERE WAS ANY SUCH COUNCIL
13 DIRECTION, BUT "COUNCIL DIRECTION" IS VAGUE SPEAK, OFTEN,
14 SO --

15 Q. TO YOUR KNOWLEDGE, IS THERE ANY COUNCIL POLICY THAT
16 AUTHORIZES THE MAYOR OR ANYONE ELSE FROM THE CITY COUNCIL TO
17 INTERVENE IN A DISPUTE BETWEEN TWO LABOR UNIONS?

18 A. I DON'T THINK THERE'S ANYTHING THAT AUTHORIZES IT.
19 I DON'T THINK THERE'S ANYTHING THAT PROHIBITS IT. I'VE SEEN
20 IT HAPPEN.

21 Q. OKAY. IS THERE ANY COUNCIL OR CITY POLICY THAT
22 REQUIRED NORCAL'S SUBCONTRACTOR CWS TO PAY FOR THE TEAMSTERS
23 OVER THE LONGSHOREMEN?

24 A. I DON'T BELIEVE THERE IS ANY SUCH POLICY. I DON'T
25 THINK THE POLICIES RELATING TO LIVING WAGE OR PREVAILING
26 WAGE WOULD HAVE PUSHED ANYBODY TO FAVOR THE TEAMSTERS OVER
27 THE LONGSHOREMEN.

28 Q. IN FACT, ISN'T IT TRUE THAT THE CITY'S PREVAILING,

SUE HERFURTH, CSR #9645

1307

1 NEITHER THE PREVAILING WAGE OR LIVING WAGE POLICY APPLIED TO
2 THE MRF WORKERS WHO PERFORMED WORK AT A MRF FACILITY NOT ON
3 THE CITY STREETS?

4 A. THAT IS CORRECT. THERE'S A STAFF REPORT ON THAT,
5 AND IT'S CORRECT FOR TWO REASONS. ONE IS IT FALLS OUTSIDE
6 OF THE DEFINITION OF, WHEREVER IT IS, IT'S NOT ON CITY
7 PROPERTY, AND THE OTHER PIECE OF IT IS IN THE POLICIES, IF
8 YOU HAVE A UNION CONTRACT, YOU HAVE COMPLIED WITH THE
9 POLICY.

10 Q. IN OTHER WORDS, IF THERE'S IN PLACE AN EXISTING
11 COLLECTIVE BARGAINING AGREEMENT, THAT'S DEEMED TO BE THE
12 PREVAILING WAGE?

13 A. THAT IS CORRECT.

14 Q. NOW, IF WE CONTINUE ON WITH THE MAYOR'S MEMO OF
15 SEPTEMBER -- YOU KNOW, I JUST DISCOVERED SOMETHING ABOUT
16 THIS MEMO, EVEN THOUGH I'VE LOOKED AT IT QUITE A BIT. THE
17 FIRST PAGE OF THE MEMO HAS A DATE OF SEPTEMBER 16, 2004,
18 CORRECT?

19 A. RIGHT.

20 Q. BUT IF YOU GO TO PAGE THREE OF THE MEMO, IN THE
21 HEADER THE DATE IS SEPTEMBER 10, 2004. RIGHT?

22 A. THAT'S CORRECT.

23 Q. NOW, THAT'S NOT WHAT I WANT TO ASK YOU ABOUT.

24 A. THAT'S WHY YOU HAVE TO HAVE READ THESE THINGS MORE
25 THAN ONCE.

26 Q. IN THE FIRST FULL PARAGRAPH ON PAGE THREE, THERE'S
27 A LINE THAT READS:

28 THE HIGHER COST WILL NOT INCREASE RATES FOR

SUE HERFURTH, CSR #9645

1308

1 OUR RESIDENTS.

2 DO YOU SEE THAT LINE?

3 A. YES.

4 Q. HOW IS THAT POSSIBLE?

5 A. IT'S NOT POSSIBLE.

6 Q. WHY DO YOU SAY THAT?

7 A. YOU HAVE TO PAY FOR WHAT YOU USE. YOU SPEND MONEY;
8 THE MONEY HAS TO COME FROM SOMEWHERE.

9 Q. NOW, THE WAY WE UNDERSTAND THIS TO WORK AT THE
10 CITY, THE CITY IS ENTITLED TO ASSESS A FEE TO THE PROPERTY

11 OWNERS RECEIVING THE SERVICE, CORRECT? THEY CHARGE THE
12 RATEPAYERS, THE PROPERTY OWNERS FOR THE SERVICE OF HAVING
13 THEIR TRASH HAULED AWAY, RIGHT?

14 A. THAT'S RIGHT, AND I THINK WE CHARGE EVEN IF WE
15 DON'T HAUL AWAY ANY TRASH.

16 Q. TO THE EXTENT THAT THE REVENUE GENERATED IN THAT
17 MANNER COMES UP SHORT, THE SHORTAGE IS MADE UP BY FUNDS FROM
18 THE GENERAL FUND, CORRECT?

19 A. EITHER THAT OR THEY COME OUT OF THE RESERVES, OR WE
20 HAVE A RATE INCREASE.

21 Q. RIGHT. SO WHEN YOU SAW THIS LINE ABOUT THE HIGHER
22 COSTS NOT INCREASING RATES FOR OUR RESIDENTS, DID YOU WONDER
23 WHETHER OR NOT THE PREVIOUS NINE PERCENT RATE HIKE MUST HAVE
24 ANTICIPATED THIS ADDITIONAL EXPENSE?

25 A. NO, I ACTUALLY DIDN'T THINK ABOUT THE PREVIOUS NINE
26 PERCENT RATE HIKE BECAUSE I THOUGHT THE DISCUSSION AT THE
27 MEETING WAS FAIRLY CLEAR ON THAT.

28 Q. CLEAR IN THE SENSE THAT IT HAD NOTHING TO DO WITH

SUE HERFURTH, CSR #9645

1309

1 PAYING NORCAL EXTRA MONEY TO --

2 A. THAT'S RIGHT.

3 Q. WHAT WAS THE CONDITION OF THE CITY'S BUDGET AT THE
4 TIME OF THIS SEPTEMBER 2004 PROPOSED AMENDMENT TO THE NORCAL
5 AGREEMENT?

6 A. WE WERE IN THE THIRD YEAR OF A BUDGET SHORTFALL.
7 WE'RE NOW IN THE FIFTH YEAR OF A BUDGET SHORTFALL, MEANING
8 EXPENSES ARE GROWING FASTER THAN OUR REVENUES AND WE'RE

9 HAVING TO MAKE CUTS.

10 Q. THIS 11 MILLION DOLLARS TO NORCAL, IF IT DIDN'T GET
11 PAID FOR WITH A RATE INCREASE, CAME OUT OF THE GENERAL FUND,
12 WOULD THAT HAVE MEANT THAT ADDITIONAL CITY SERVICES WOULD
13 HAVE TO BE CUT TO PAY FOR THIS?

14 A. YES, OR IT WOULD COME OUT OF A RESERVE SOMEWHERE.
15 WE WEREN'T BROKE, WE JUST WERE HAVING TROUBLES.

16 Q. AND ON SEPTEMBER 21, THE COUNCIL VOTED ON WHETHER
17 OR NOT TO PASS THIS CONTRACT AMENDMENT; IS THAT CORRECT?

18 A. THAT'S RIGHT.

19 Q. LET ME JUST SHOW YOU WHAT HAS BEEN MARKED AS
20 EXHIBIT 93. DO YOU RECOGNIZE THIS DOCUMENT?

21 A. YES, I DO.

22 Q. DO YOU KNOW WHO THE AUTHOR OF THIS DOCUMENT IS?

23 A. I WAS.

24 Q. AND WAS IT SUBMITTED TO THE MAYOR AND CITY COUNCIL
25 ON SEPTEMBER 20, 2004?

26 A. YES, IT WAS.

27 Q. AND IN THIS DOCUMENT YOU RECOMMEND TO THE COUNCIL
28 TO TURN DOWN NORCAL'S REQUEST FOR AMENDMENT?

SUE HERFURTH, CSR #9645

1310

1 A. THAT'S CORRECT.

2 Q. NOW, PRIOR TO THE VOTE ON, THE VOTE WAS THE
3 FOLLOWING DAY ON SEPTEMBER 21; IS THAT CORRECT?

4 A. YES.

5 Q. PRIOR TO THE VOTE, DID YOU SPEAK WITH ANY
6 REPRESENTATIVES OF NORCAL OR CWS ABOUT THE AMENDMENT?

7 A. I GOT WRITTEN COMMUNICATIONS FROM BOTH CWS AND
8 NORCAL. IT WAS A LOT OF DOCUMENTS THAT FINALLY GOT FLUSHED
9 OUT DURING THIS TIME PERIOD. I DO NOT REMEMBER EVER TALKING
10 TO NORCAL OR CWS ABOUT THE AMENDMENT ITSELF.

11 Q. OKAY. IN ANY OF THE COMMUNICATIONS, WHETHER
12 WRITTEN OR VERBAL, DID EITHER NORCAL OR CWS EVER PUT FORWARD
13 THE ARGUMENT THAT THE CITY SHOULD VOTE IN FAVOR OF THIS
14 AMENDMENT, BECAUSE PROMISES OR REPRESENTATIONS HAVE BEEN
15 MADE TO US THAT IT, THE CITY, WOULD PAY THESE EXTRA COSTS?

16 A. YES.

17 Q. AND WHAT DID THEY SAY IN THAT REGARD; WHO SAID WHAT
18 IN THAT REGARD?

19 A. I THINK THE FIRST DOCUMENT WAS A COPY OF A LETTER
20 FROM NORCAL TO THE ENVIRONMENTAL SERVICES PEOPLE ASKING FOR
21 MONEY TO COVER THE INCREASED LABOR COSTS; THE STAFF TURNED
22 THEM DOWN, AND THERE WAS A SECOND LETTER I REMEMBER SEEING
23 FROM NORCAL.

24 Q. WE'LL LOOK AT THOSE IN A MOMENT, BUT WE'RE RUNNING
25 OUT OF TIME, UNFORTUNATELY.

26 LET'S STAY WITH THIS MEMO AND PICK UP -- AFTERWARD
27 WITH THESE DOCUMENTS.

28 IN YOUR MEMO YOU SAY, IN PARAGRAPH TWO:

SUE HERFURTH, CSR #9645

1311

1 ANY PROMISES OR REPRESENTATIONS THAT MAY HAVE
2 BEEN MADE TO NORCAL WERE NOT DISCLOSED TO THE
3 COUNCIL WHEN NORCAL WAS APPROVED AS THE PREFERRED
4 VENDOR. CORRECT?

5 A. THAT' S CORRECT.

6 Q. WHAT WERE YOU REFERRING TO?

7 A. THE STATEMENTS THAT NORCAL HAD MADE IN THEIR
8 REQUEST FOR MONEY.

9 Q. WHAT DID THOSE STATEMENTS SAY, THE GIST OF THEM?

10 A. THAT NORCAL HAD AGREED TO USE THE, HAVE CWS USE THE
11 TEAMSTERS, REIMBURSE NORCAL, OR REIMBURSE CWS, AND THE CITY
12 WOULD MAKE UP THE DIFFERENCE.

13 Q. WHO DID NORCAL SAY HAD PROMPTED NORCAL TO TAKE
14 THESE ACTIONS?

15 A. I THINK THEY INDICATED IN THEIR LETTERS THAT IT WAS
16 THE MAYOR, ALTHOUGH THEY MAY HAVE BEEN VAGUE ABOUT THAT AND
17 REFERRED TO THE MAYOR' S OFFICE. I CAN' T RECALL FOR SURE.

18 Q. OKAY. AND YOU BELIEVE IT WAS IN A WRITTEN
19 COMMUNICATION YOU PRODUCED TO US IN RESPONSE TO THE
20 SUBPOENA?

21 A. YES.

22 Q. UNFORTUNATELY, I APOLOGIZE. WE' RE ALMOST AT OUR
23 QUITTING TIME AND I DON' T WANT TO BRING OUT ALL THE
24 DOCUMENTS AND GO THROUGH THEM AT THIS TIME; I THINK WE' RE
25 GOING TO HAVE TO RECESS AT THIS POINT.

26 ARE YOU ABLE TO RETURN TOMORROW AFTERNOON?

27 A. SURE.

28 Q. OKAY. WE HAVE ANOTHER WITNESS TOMORROW AT 11: 00

SUE HERFURTH, CSR #9645

1312

1 THAT I THINK WILL CONCLUDE IN ONE HOUR. SO WHY DON' T YOU
2 RETURN TOMORROW AT 1: 30. YOU' RE DIRECTED TO RETURN AT 1: 30,

3 AND IF THERE' S A PROBLEM, JUST LET US KNOW.

4 THE WITNESS: I WILL BE HERE AT 1: 30.

5 MR. FINKELSTEIN: THANK YOU VERY MUCH, AND I
6 APOLOGIZE. THE WITNESS FROM THIS MORNING WENT LONGER THAN
7 WE ANTICIPATED.

8 THE FOREPERSON: I WOULD LIKE TO READ A
9 CONFIDENTIALITY ADMISSI ON TO YOU.

10 THE WITNESS: I WAS GOING TO ASK ABOUT THAT.

11 THE FOREPERSON: YOU' RE ADMONISHED NOT TO REVEAL
12 TO ANY PERSON EXCEPT AS DIRECTED BY THE COURT WHAT QUESTIONS
13 WERE ASKED OR WHAT RESPONSES WERE GIVEN, OR ANY OTHER
14 MATTERS CONCERNING THE NATURE OR SUBJECT OF THE GRAND JURY' S
15 INVESTIGATION WHICH YOU LEARNED DURING YOUR APPEARANCE
16 BEFORE THE GRAND JURY, UNLESS AND UNTIL SUCH TIME AS THE
17 TRANSCRIPT OF THIS GRAND JURY PROCEEDING IS MADE PUBLIC.
18 VIOLATION OF THIS ADMONITION MAY BE PUNISHABLE AS A CONTEMPT
19 OF COURT.

20 DO YOU UNDERSTAND THAT?

21 THE WITNESS: I DO.

22 MR. FINKELSTEIN: THANK YOU VERY MUCH. WE' LL SEE
23 YOU TOMORROW.

24 I DON' T THINK WE HAVE ANY OTHER MATTERS TO TAKE
25 UP.

26 THE FOREPERSON: WE WOULD LIKE TO DISCUSS
27 SCHEDULING IF THERE' S TIME TO DO THAT.

28 MR. FINKELSTEIN: WE CAN DO THAT OFF THE RECORD.

SUE HERFURTH, CSR #9645

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ONLY SCHEDULING, NOT RELATED TO THE CASE.

THE FOREPERSON: THAT'S CORRECT. LET US ADJOURN
TODAY'S SESSION.

(COURT WAS ADJOURNED FOR THE DAY.)

1 SAN JOSE, CALIFORNIA APRIL
2 13, 2006

3

4

PROCEEDINGS:

5

6

7

THE FOREPERSON: LET ME CALL THIS SESSION TO ORDER
AND TAKE ROLL. LET THE RECORD SHOW JUROR (NAME REDACTED) IS
STILL OUT OF TOWN.

8

9

10

11

12

13

14

MR. FINKELSTEIN: WE'RE READY TO PROCEED.

PAUL ROTTENBERG,
CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
AS FOLLOWS:

THE WITNESS: I DO.

EXAMINATION:

BY MR. FINKELSTEIN:

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Q. PLEASE STATE AND SPELL YOUR FULL NAME.

A. PAUL JOSEPH ROTTENBERG.

Q. SPELL YOUR NAME FOR THE REPORTER, PLEASE.

A. P-A-U-L, J-O-S-E-P-H, R-O-T-T-E-N-B-E-R-G.

Q. MR. ROTTENBERG, WHAT YOU DO FOR A LIVING?

A. I'M A CONSULTANT.

Q. WHAT KIND OF CONSULTING DO YOU DO?

A. WELL, I HAVE TWO AREAS OF PRACTICE NOW. ONE IS
THAT I WORK FOR CALIFORNIA WASTE SOLUTIONS, AND I PROVIDE
THEM SOME ECONOMIC CONSULTING. I DO A LOT OF THEIR RATE
ANALYSIS, THEIR CONTRACTS. I PROVIDE SOME INPUT ON CONTRACT
LANGUAGE THAT THEY HAVE WITH SOME OF THEIR CLIENTS, SOME
REGULATORY RELATED STUFF FOR THEM AS WELL.

AND MY OTHER AREA OF PRACTICE, I WORK FOR FIRE

1 DEPARTMENTS AND I DO STATISTICAL ANALYSIS, AND I TEACH
2 CLASSES IN DATA ANALYSIS AND BASIC STATISTICS.

3 Q. I WONDER IF YOU WOULD ADJUST THE MICROPHONE OR YOUR
4 CHAIR SO YOU'RE SPEAKING DIRECTLY INTO IT.

5 SO ARE YOU AN INDEPENDENT CONTRACTOR OR AN
6 EMPLOYEE OF CWS?

7 A. I'M AN INDEPENDENT CONTRACTOR.

8 Q. WHAT IS THE NAME OF YOUR BUSINESS OR COMPANY?

9 A. DBA FOOTHILL RESOURCES.

10 Q. CAN YOU TRY ADJUSTING THE MIKE A LITTLE CLOSER TO
11 YOU. HOW LONG HAVE YOU BEEN IN THAT BUSINESS?

12 A. I HAVE BEEN WORKING FOR CALIFORNIA WASTE SOLUTIONS
13 AS AN INDEPENDENT CONTRACTOR SINCE, I BELIEVE, 1995.

14 Q. AND WHAT'S YOUR BACKGROUND, TRAINING, AND
15 EDUCATION?

16 A. GOING BACK HOW FAR?

17 Q. WHY DON'T WE START WITH COLLEGE.

18 A. I HAVE A BACHELOR'S DEGREE IN INTERNATIONAL
19 RELATIONS. I DID UNDERGRADUATE WORK IN ECONOMICS AND A
20 COUPLE OTHER THINGS. DID SOME GRADUATE WORK IN ENGLISH, AND
21 I HAVE A MASTER'S IN BUSINESS ADMINISTRATION.

22 Q. HOW DID YOU BECOME KNOWLEDGEABLE IN THE AREA OF
23 STATISTICS?

24 A. UH -- FORMALLY THROUGH THE GRADUATE PROGRAM IN
25 BUSINESS, BUT INFORMALLY JUST BY WORKING WITH FINANCE AND
26 STATISTICS.

27 Q. WHERE ARE YOUR OFFICES LOCATED?

28 A. MOSTLY, I WORK OUT OF MY HOUSE.

SUE HERFURTH, CSR #9645

1316

1 Q. WHERE, WHAT CITY IS THAT?

2 A. NEVADA CITY, CALIFORNIA. ACTUALLY, IN THE
3 UNINCORPORATED COUNTY, NOT IN THE CITY.

4 Q. AND HOW DID YOU COME TO ENTER INTO A BUSINESS
5 RELATIONSHIP WITH CWS?

6 A. I WAS A FULL-TIME EMPLOYEE OF CALIFORNIA WASTE
7 SOLUTIONS FROM LATE 1992 THROUGH MID-1995.

8 Q. WHAT WAS YOUR JOB?

9 A. I WAS THE GENERAL MANAGER OF THEIR COMPANY.

10 Q. AND AT THAT TIME, WAS THAT AT THE OAKLAND OFFICES?

11 A. THAT'S CORRECT.

12 Q. AND THE COMPANY HAD A CONTRACT WITH THE CITY OF
13 OAKLAND, AMONG OTHERS?

14 A. AT THE TIME THAT I STARTED THE COMPANY IT WAS BRAND
15 NEW AND THE ONLY CONTRACT WAS WITH CITY OF OAKLAND, AND IT
16 EXPANDED FROM THERE.

17 Q. WAS THERE SOME KIND OF CONTROVERSY OR ALLEGATIONS
18 MADE AGAINST CWS HAVING TO DO WITH THE USE OF LABOR OR
19 UNDERPAYMENT OF WAGES AS REQUIRED BY THE CITY OF OAKLAND
20 AROUND THAT?

21 A. CAN YOU BE A LITTLE MORE SPECIFIC, PLEASE.

22 Q. WHERE WERE YOU WORKING IN 1998?

23 A. I WAS SELF-EMPLOYED.

24 Q. WAS CWS ONE OF YOUR CLIENTS?

25 A. YES.

26 Q. AND WHEN WAS IT YOU LEFT FULL-TIME EMPLOYMENT WITH
27 CWS?

28 A. 1995.

SUE HERFURTH, CSR #9645

1317

1 Q. LET ME SHOW YOU AN EXHIBIT THAT'S BEEN MARKED AS
2 EXHIBIT 89. IT'S A PRINTOUT OFF THE WEB, A STORY BY DAVID
3 BACON. IT RELATES TO ALLEGATIONS ABOUT IMPROPRIETIES ABOUT
4 CWS. HAVE YOU SEEN THAT STORY?

5 A. I'VE SEEN A NUMBER OF STORIES BY DAVID BACON. I
6 DON'T KNOW I HAVE NECESSARILY SEEN THAT ONE, BUT I AM FAIRLY
7 WELL FAMILIAR WITH HIS CONTENT.

8 Q. WHY IS THAT?

9 A. BECAUSE I READ A NUMBER OF ARTICLES BY DAVID BACON,
10 I KNOW HIS CONTENT ON THAT SUBJECT.

11 Q. SO WE UNDERSTAND THE BASIC ALLEGATION IS THAT CWS'S
12 CONTRACT WITH OAKLAND REQUIRED CERTAIN MINIMUM WAGES AND/OR
13 BENEFITS TO BE PAID AND CWS DIDN'T MEET THOSE MINIMUMS, AND
14 IN ADDITION THERE'S ALLEGATIONS THAT THEY USED SCAB LABOR OR
15 NON-UNION LABOR. THAT'S ANOTHER SUBJECT OF THE ALLEGATION.
16 IS THAT THE ALLEGATION YOU'RE TALKING ABOUT?

17 A. YES.

18 Q. DO YOU HAVE ANY KNOWLEDGE ABOUT WHETHER THE
19 ALLEGATIONS ARE TRUE OR NOT?

20 A. YES, I DO.

21 Q. WHAT'S YOUR INFORMATION?

22 A. OKAY --

23 Q. ARE THEY TRUE OR NOT?

- 24 A. NO, THEY ARE ABSOLUTELY NOT TRUE.
25 Q. WHY NOT?
26 A. WITH RESPECT TO THE SECOND ALLEGATION, CWS WAS NOT
27 UNIONIZED AT THE TIME, AND SO --
28 Q. DID THE CONTRACT WITH OAKLAND REQUIRE THEM TO BE

SUE HERFURTH, CSR #9645

1318

- 1 UNIONIZED?
2 A. IT DID NOT. IT REQUIRED THAT -- LET ME, THE
3 EMPLOYEES THAT MR. BACON WAS WRITING ABOUT WERE NOT
4 UNIONIZED AT THE TIME.
5 Q. OKAY.
6 A. OKAY. AND SO WE COULD NOT HAVE USED SCAB LABOR.
7 Q. OKAY.
8 A. WITH RESPECT TO THE FIRST ALLEGATION, WHICH WAS
9 THAT CWS WAS PAYING WAGES THAT WERE NOT, TO PARAPHRASE, IN
10 COMPLIANCE WITH THE WAGES SPECIFIED IN THE CONTRACT WITH
11 OAKLAND FOR THAT CLASS OF EMPLOYEE, THE CITY OF OAKLAND DID
12 ITS OWN INVESTIGATION BASED ON OUR PAYROLL RECORDS AND
13 INFORMATION WE PROVIDED, AND I WAS SUBSTANTIALLY RESPONSIBLE
14 FOR DOING THAT WORK. AND THE CITY OF OAKLAND CONCLUDED THAT
15 WE WERE NOT IN VIOLATION OF THE TERMS OF THE AGREEMENT WITH
16 THE CITY OF OAKLAND.
17 Q. WHAT ABOUT YOU PERSONALLY; DID YOU BELIEVE CWS WAS
18 IN VIOLATION?
19 A. I DID NOT BELIEVE THAT CWS WAS IN VIOLATION.
20 Q. OKAY. LET ME SHOW YOU NEXT A DOCUMENT THAT HAS
21 BEEN MARKED AS GRAND JURY EXHIBIT 15. IT'S AN ADDENDUM TO

22 AN AGREEMENT BETWEEN NORCAL AND CWS AMENDING THEIR ORIGINAL
23 SUBCONTRACT. IT'S DATED OCTOBER 9, 2000.

24 IT'S SIGNED BY BOTH MICHAEL SANGIACOMO AND DAVID
25 DUONG. ARE YOU THE AUTHOR OF THIS DOCUMENT?

26 A. I'M ONE OF TWO AUTHORS -- WELL, SOMEWHERE BETWEEN
27 TWO AND FOUR AUTHORS.

28 Q. OKAY. WE WANT TO GO INTO THAT. DID YOU CONTRIBUTE

SUE HERFURTH, CSR #9645

1319

1 TO THE WORDING OF THIS DOCUMENT?

2 A. YES, I DID.

3 Q. HOW DID YOU GET INVOLVED IN THAT PROCESS?

4 A. DAVID DUONG ASKED ME TO DRAFT AN ADDENDUM TO THE
5 CONTRACT BETWEEN CWS AND NORCAL.

6 Q. WHEN DID HE ASK YOU TO DO THAT; WAS IT ON THE SAME
7 DAY AS THE DOCUMENT OR --

8 A. IT WOULD NOT HAVE BEEN ON THE DAY ON WHICH THE
9 DOCUMENT WAS EXECUTED BECAUSE THERE WERE SEVERAL ITERATIONS,
10 AND GOING BACK AND FORTH BETWEEN MYSELF AND CWS' S ATTORNEY,
11 WHO PARTICIPATED IN THE DRAFTING, AND THERE WERE AT LEAST
12 TWO ITERATIONS BETWEEN NORCAL AND CWS BEFORE THE DOCUMENT
13 WAS ULTIMATELY EXECUTED.

14 Q. LET ME SEE IF I CAN ORIENT YOU AS TO TIME. OCTOBER
15 9, 2000 WAS A MONDAY, AND WE HAVE REASON TO BELIEVE THAT
16 THIS AGREEMENT WOULD HAVE BEEN WORKED ON SOMETIME AFTER
17 FRIDAY, OCTOBER 6, 2000. SO DID YOU WORK ON IT ON FRIDAY OR
18 THE WEEKEND OR WHAT?

19 A. I BELIEVE THE WORK ON THE DOCUMENT BEGAN THE WEEK

20 BEFORE.

21 Q. THE WEEK BEFORE?

22 A. THE WEEK OF THE SIXTH. SO I GUESS IT STARTED
23 ROUGHLY ON THE SECOND. AND I THINK THAT IF INDEED THE NINTH
24 WAS A MONDAY, I DON'T REMEMBER THAT I WOULD HAVE WORKED ON
25 IT ON THE WEEKEND, BUT I DO BELIEVE THERE WAS A CITY COUNCIL
26 MEETING ON THE 10TH.

27 Q. THAT'S CORRECT.

28 A. THE AMENDMENT DOCUMENT NEEDED TO BE EXECUTED PRIOR

SUE HERFURTH, CSR #9645

1320

1 TO THE COUNCIL MEETING AND I'M SURE THAT I WORKED ON IT ON
2 FRIDAY, THE 6TH.

3 Q. DID YOU WORK ON IT BEFORE FRIDAY, THE 6TH?

4 A. I BELIEVE SO.

5 Q. WHEN DID YOU FIRST START WORKING ON THIS DOCUMENT?

6 A. I DON'T RECALL.

7 Q. WOULD IT HAVE BEEN SOMETIME DURING THE WEEK OF
8 FRIDAY, OCTOBER 6?

9 A. YES, I BELIEVE SO.

10 Q. DO YOU RECALL WHICH DAY OF THE WEEK IT WAS?

11 A. I DO NOT.

12 Q. AND WHO WAS THE FIRST PERSON TO GET YOU INVOLVED IN
13 WORKING ON THIS DOCUMENT?

14 A. DAVID DUONG.

15 Q. WHAT DID MR. DUONG TELL YOU?

16 A. IT'S BEEN A WHILE. I'LL DO MY BEST TO RECALL THE
17 CONVERSATION.

18 Q. OKAY.

19 A. I DO NOT RECALL IF I WAS IN THE ROOM WHEN HE WAS ON
20 THE PHONE WITH NORCAL'S REPRESENTATIVES, BUT I DO RECALL HIM
21 TELLING ME THAT NORCAL WANTED CWS TO SEND A LETTER TO THE
22 CITY OF SAN JOSE SAYING THAT CWS WOULD USE TEAMSTER LABOR IN
23 SAN JOSE IF NORCAL WAS AWARDED THE CONTRACT, AND CWS WOULD
24 THEREFORE BE THE SUBCONTRACTOR.

25 DAVID SAID THAT IF -- HE WOULD BE WILLING TO USE
26 TEAMSTERS, BUT NORCAL WOULD HAVE TO COVER ANY DIFFERENCE IN
27 COSTS BETWEEN THE TEAMSTERS AND LONGSHOREMEN LOCAL 6, WHICH
28 IS THE UNION THAT CWS HAS A CONTRACT WITH IN OAKLAND AND THE

SUE HERFURTH, CSR #9645

1321

1 UNION WHICH WE FULLY EXPECTED WOULD BE REPRESENTING OUR
2 WORKERS IN SAN JOSE.

3 AND AS A RESULT, WE EXPECTED THAT THE TEAMSTER
4 LABOR COST WOULD BE HIGHER, ESPECIALLY BECAUSE WITH NORCAL
5 AS THE PRIME CONTRACTOR, NORCAL ALREADY HAS A LABOR
6 AGREEMENT WITH THE TEAMSTERS FOR PROCESSING THE MATERIALS IN
7 THEIR SAN FRANCISCO FACILITY, AND WE KNEW THESE WAGE AND
8 BENEFIT PACKAGES WERE MUCH HIGHER THAN WHAT WE WERE PAYING
9 IN OAKLAND. SO WE EXPECTED THERE WOULD BE A SIGNIFICANT
10 ECONOMIC IMPACT ON CWS IF THEY AGREED TO ACCEPT THE
11 TEAMSTERS, SO WE -- BASICALLY, DAVID'S POSITION WAS, I'LL DO
12 IT, BUT YOU HAVE TO COVER THE DIFFERENCE.

13 Q. OKAY. SO WHAT HAPPENED AFTER THAT?

14 A. UH -- I BEGAN WORK DRAFTING WHAT ULTIMATELY BECAME
15 THAT DOCUMENT, AND I CONTACTED ONE OF CWS'S ATTORNEYS WHOM

16 DAVID AND I HAD DISCUSSED USING.

17 Q. WHO WAS THAT?

18 A. HAROLD SMITH.

19 Q. AND WHAT FIRM DOES HE WORK OR DID HE WORK FOR?

20 A. I BELIEVE AT THE TIME IT WAS STEIN AND SMITH,
21 ALTHOUGH IT MAY HAVE BEEN STEIN, SMITH, LUTZER AND COE
22 (PHONETIC).

23 Q. IT WASN'T RICHARD NORRIS' FIRM?

24 A. IT WAS NOT.

25 Q. LET ME JUST LOOK AT YOUR MICROPHONE. THANK YOU.
26 OKAY. DID RICHARD NORRIS BECOME INVOLVED IN THE DRAFTING OF
27 THIS AGREEMENT?

28 A. NO.

SUE HERFURTH, CSR #9645

1322

1 Q. WHO ELSE DID YOU SPEAK WITH IN PREPARATION OF THIS
2 DOCUMENT?

3 A. I DON'T RECALL SPEAKING WITH ANYBODY BESIDES DAVID
4 DUONG AND PETER SMITH. I IDENTIFIED HIM AS HAROLD SMITH,
5 BUT HE GOES BY PETER. HOWEVER, I DID HAVE A CONVERSATION
6 WITH MIKE SANGIACOMO.

7 Q. WAS THAT BEFORE FINALIZING THE WORDING OF THE
8 DOCUMENT?

9 A. I'M NOT -- I DON'T RECALL IF THE DOCUMENT WAS
10 FINALIZED AT THE TIME I SPOKE WITH MIKE. MIKE WAS PRESSING
11 ME TO GET THE LETTER OVER TO THE CITY OF SAN JOSE SAYING
12 THAT CWS WOULD USE TEAMSTER LABOR, AND I HAD TOLD MIKE THAT
13 CWS WAS NOT GOING TO SEND A LETTER UNTIL CWS RECEIVED THE

14 EXECUTED ADDENDUM, AND THE REASON I'M ANSWERING THE QUESTION
15 THIS WAY IS THAT I BELIEVE THAT NORCAL CHANGED THE WORDING
16 OF THE FINAL DRAFT SLIGHTLY. I DON'T RECALL WHETHER OR NOT
17 I HAD SEEN THAT CHANGE BEFORE OR AFTER THE FINAL DOCUMENT
18 WAS EXECUTED.

19 Q. OKAY. SO YOU TOLD US THAT THIS STARTED WITH A
20 DISCUSSION WITH DAVID DUONG, CORRECT?

21 A. THAT'S CORRECT.

22 Q. NEXT THING YOU DID WAS TALK TO CWS'S ATTORNEY PETER
23 SMITH, CORRECT?

24 A. CORRECT.

25 Q. WHAT DID YOU DO AFTER THAT?

26 A. I DON'T RECALL, BUT I THINK THAT I PROBABLY
27 DISCUSSED IT IN DETAIL WITH DAVID TO EXPLAIN TO HIM EXACTLY
28 WHAT WE HAD DRAFTED, WHY WE HAD DRAFTED IT THE WAY WE DID,

SUE HERFURTH, CSR #9645

1323

1 AND I MAY HAVE HAD A CONVERSATION WITH SOMEONE ELSE AT
2 NORCAL ABOUT TRANSMITTING THE DOCUMENT, BUT I DON'T RECALL
3 SPECIFICALLY.

4 Q. OKAY. DID YOU CIRCULATE DRAFTS OF THE DOCUMENT BY
5 E-MAIL OR OTHER MEANS?

6 A. I BELIEVE THAT I WAS COMMUNICATING WITH PETER SMITH
7 VIA E-MAIL. AND I MAY HAVE E-MAILED A COPY TO DAVID,
8 ALTHOUGH I BELIEVE THAT I WAS IN HIS OFFICE IN OAKLAND WHEN
9 THE CONVERSATION WAS ORIGINALLY RAISED ABOUT THE NEED FOR
10 THIS DOCUMENT. SO I MAY HAVE DONE ALL THAT WORK PRIOR TO
11 THE 9TH AT CWS'S OFFICES IN OAKLAND.

12 I'M ABSOLUTELY POSITIVE THAT THE EXECUTED
13 DOCUMENT, HOWEVER, WAS RECEIVED IN MY HOUSE AT NEVADA CITY,
14 I BELIEVE, ON THE 9TH.

15 Q. WHAT ABOUT COMMUNICATIONS WITH MICHAEL SANGIACOMO
16 AND NORCAL; DID YOU HAVE E-MAIL COMMUNICATIONS WITH THEM?

17 A. I BELIEVE WE DID HAVE SOME E-MAIL BACK AND FORTH.

18 Q. RELATED TO THE WORDING OF THIS DOCUMENT?

19 A. I BELIEVE SO.

20 Q. BEFORE THE DOCUMENT WAS EXECUTED?

21 A. I'M -- IN MY MIND I'M SEEING MY E-MAIL, AND I'M
22 SEEING IT IN MY INBOX, SOMETHING FROM MR. SANGIACOMO, BUT I
23 DON'T RECALL WHAT IT WAS. IT MAY HAVE BEEN AN ITERATION OF
24 THE AGREEMENT. I WOULDN'T HAVE HAD MANY OTHER OCCASIONS TO
25 INTERACT DIRECTLY WITH THE CITY OR NORCAL.

26 Q. WERE YOU PRESENT FOR THE SIGNING OF THE DOCUMENT BY
27 EITHER DAVID DUONG OR MIKE SANGIACOMO?

28 A. (NO RESPONSE.)

SUE HERFURTH, CSR #9645

1324

1 Q. I'LL WITHDRAW THE QUESTION. WHERE WERE YOU ON
2 OCTOBER 9, 2000?

3 A. I KNOW FOR SURE THAT I WAS AT HOME IN NEVADA CITY
4 AT THE TIME THAT I RECEIVED THE DOCUMENT, BUT I MAY HAVE
5 BEEN ELSEWHERE AS WELL.

6 Q. WHAT DOES THAT MEAN?

7 A. I MAY HAVE STARTED OUT THE DAY IN THE BAY AREA AND
8 GONE HOME IN THE AFTERNOON. I CAN'T SAY WHERE I WAS ALL
9 DAY, BUT I KNOW I WAS IN MY HOUSE RECEIVING THAT DOCUMENT

10 THROUGH MY FAX MACHINE ON, I BELIEVE, THE DATE THAT IT WAS
11 EXECUTED.

12 Q. OKAY. LET'S LOOK AT THE FIRST PARAGRAPH OF THE
13 DOCUMENT. IT STARTS OUT:

14 THE PARTIES HAVE LEARNED THAT THE CITY OF SAN
15 JOSE MAY REQUIRE CALIFORNIA WASTE SOLUTIONS, INC.
16 AND NORCAL WASTE SYSTEMS, INC. TO PROVIDE WAGE AND
17 BENEFIT PACKAGES THAT ARE DIFFERENT THAT CWS' S
18 CURRENT WAGE AND BENEFIT PACKAGES.

19 I ASSUME THE SECOND "THAT" IS A TYPO AND SHOULD BE
20 "THAN. "

21 A. REGRETTABLY, YES.

22 Q. OKAY. WHERE DOES THAT LANGUAGE COME FROM; WHAT'S
23 THE SOURCE OF THAT LANGUAGE?

24 A. IT COULD HAVE BEEN ME VERBATIM OR PETER SMITH
25 VERBATIM, OR IT COULD HAVE BEEN COLLABORATIVE.

26 Q. DID YOU HAVE ANY DISCUSSIONS DIRECTLY WITH ANYONE
27 FROM THE CITY OF SAN JOSE?

28 A. NO.

SUE HERFURTH, CSR #9645

1325

1 Q. SO YOU MUST HAVE GOTTEN THAT INFORMATION FROM ONE
2 OF THE PARTIES REFERRED TO IN THE FIRST PARAGRAPH, CORRECT?

3 A. CORRECT.

4 Q. THE PARTIES ARE CWS AND NORCAL, CORRECT?

5 A. CORRECT.

6 Q. SO WHERE DID YOU GET THE INFORMATION FROM THAT
7 RESULTED IN THAT LANGUAGE IN THE FIRST PARAGRAPH?

- 8 A. WELL, ORIGINALLY I GOT IT FROM DAVID DUONG.
- 9 Q. WHAT DID DAVID DUONG TELL YOU IN THAT REGARD?
- 10 A. IT'S BEEN SOME TIME, AND I HAVE BEEN ASKED THESE
- 11 QUESTIONS A FEW TIMES AND --
- 12 Q. IN WHAT CONTEXT?
- 13 A. UH -- IN PREPARING FOR LITIGATION WITH NORCAL.
- 14 Q. THIS IS THE ARBITRATION HEARING?
- 15 A. CORRECT.
- 16 Q. LET'S TRY TO BREAK UP THIS QUESTION, OKAY? THAT
- 17 LANGUAGE I JUST READ, "THE PARTIES HAVE LEARNED THAT THE
- 18 CITY OF SAN JOSE MAY REQUIRE CALIFORNIA WASTE SOLUTIONS,
- 19 INC. AND NORCAL WASTE SYSTEMS, INC. TO PROVIDE WAGE AND
- 20 BENEFIT PACKAGES THAT ARE DIFFERENT THAN CWS' S CURRENT WAGE
- 21 AND BENEFIT PACKAGES. "
- 22 THOSE AREN'T DAVID DUONG' S WORDS, ARE THEY?
- 23 A. NO.
- 24 Q. SO HE TOLD YOU SOMETHING WHICH RESULTED IN THESE
- 25 WORDS BEING PLACED ON THIS PIECE OF PAPER, CORRECT?
- 26 A. CORRECT.
- 27 Q. WHAT DID HE TELL YOU THAT GOT TRANSFORMED INTO THIS
- 28 LANGUAGE?

SUE HERFURTH, CSR #9645

1326

- 1 A. I BELIEVE THAT WHAT HE TOLD ME IS THAT THE CITY --
- 2 NORCAL SAYS THAT THE CITY IS NOT GOING TO APPROVE THE
- 3 AGREEMENT WITH NORCAL IF CWS USES LONGSHOREMEN, AND CWS HAS
- 4 TO USE TEAMSTERS OR WE'RE NOT GOING TO GET THE COUNCIL' S
- 5 OKAY ON THE CONTRACT.

6 Q. OKAY. AND DID DAVID TELL YOU WHO IN THE -- DAVID
7 TOLD YOU THAT HIS SOURCE OF INFORMATION ON THAT POINT WAS
8 NORCAL, CORRECT?
9 A. CORRECT.
10 Q. AND DID DAVID TELL YOU WHO AT NORCAL HAD GIVEN HIM
11 THAT INFORMATION?
12 A. I KNOW THAT HE TOLD ME, AND I DON'T RECALL IF IT
13 WAS MIKE SANGIACOMO OR BILL JONES OR MIKE MAHONEY.
14 Q. OR WHO?
15 A. MIKE MAHONEY.
16 Q. WHO IS MIKE MAHONEY?
17 A. HE WAS ONE OF NORCAL'S BUSINESS DEVELOPMENT PEOPLE.
18 Q. IS HE A NORCAL EMPLOYEE OR CONSULTANT?
19 A. AT THE TIME HE WAS A NORCAL EMPLOYEE.
20 Q. AND NOW?
21 A. NOW I BELIEVE HE'S AN EMPLOYEE OF ANOTHER FIRM.
22 Q. DO YOU KNOW WHICH FIRM?
23 A. I BELIEVE THAT IT IS WASTE SOLUTIONS, INC.
24 Q. WHERE ARE THEY LOCATED?
25 A. I'M NOT EXACTLY SURE. THEY HAD OFFICES IN SAN
26 FRANCISCO AT ONE TIME AND I KNOW THEY HAVE DIFFERENT, THEY
27 HAVE LOCATED DIFFERENT OPERATIONS IN A NUMBER OF PLACES, SO
28 I'M NOT SURE WHERE HIS OFFICE IS.

SUE HERFURTH, CSR #9645

1327

1 Q. WHAT WAS YOUR REACTION WHEN DAVID DUONG TOLD YOU
2 THAT, ACCORDING TO NORCAL, THE CITY IS NOT GOING TO APPROVE
3 THE AGREEMENT UNLESS CWS USES TEAMSTERS?

4 A. I WAS CONCERNED.
5 Q. WHY?
6 A. IMMEDIATELY BECAUSE OF THE MONEY.
7 Q. OKAY. ANY OTHER REASONS?
8 A. WELL, I WAS CONCERNED THAT WE WOULDN' T GET THE
9 CONTRACT.
10 Q. ANYTHING ELSE?
11 A. NOT THAT I CAN RECALL.
12 Q. DID THIS RAISE ANY ISSUES FOR YOU ABOUT THE
13 LEGALITY ABOUT THAT KIND OF REQUIREMENT FROM THE CITY?
14 A. AT THAT MOMENT I DON' T KNOW THAT I WAS CONCERNED
15 ABOUT THE LEGALITY, BUT I' M ALWAYS BAFFLED BY WHAT LABOR
16 SEEMS TO GET AWAY WITH; I WASN' T EXACTLY SURE WHO WAS
17 RESPONSIBLE FOR IT.
18 Q. YOU HAD PRIOR EXPERIENCE BEFORE OCTOBER OF 2000
19 ASSISTING COMPANIES SEEKING CONTRACTS WITH CITIES?
20 A. BEFORE 2000?
21 Q. BEFORE OCTOBER, 2000.
22 A. YES.
23 Q. AND CAN YOU GIVE US SOME IDEA OF THE EXTENT OF YOUR
24 PRIOR EXPERIENCE IN THAT REGARD?
25 A. WELL, I HAD BEEN WORKING FOR CALIFORNIA WASTE
26 SOLUTIONS SINCE 1992, AND I HAD PARTICIPATED IN A SMALL WAY
27 IN HELPING THEM PURSUE THEIR CONTRACT, THEIR FIRST CONTRACT
28 WITH THE CITY OF OAKLAND. I HAD PARTICIPATED SUBSTANTIALLY

SUE HERFURTH, CSR #9645

1328

1 IN THE PROCESS OF THEIR SECOND CONTRACT IN 1998 AND HAD
Page 116

2 PARTICIPATED IN --

3 Q. THE 1998 CONTRACT WAS IN SACRAMENTO?

4 A. NO. THAT WAS A, WELL, THERE WAS A CONTRACT, YES,
5 BUT ALSO A NEW CONTRACT WITH CITY OF OAKLAND. CWS'S INITIAL
6 CONTRACT WITH OAKLAND BEGAN IN 1993 AND EXPIRED IN 1998,
7 DECEMBER 31 OF 1997.

8 Q. YOU HAD EXPERIENCE WITH TWO OTHER CITIES, OAKLAND
9 AND SACRAMENTO; IS THAT CORRECT?

10 A. YES. BUT I HAD ALSO WORKED FOR CWS PURSUING
11 BUSINESS WITH OTHER CITIES.

12 Q. SUCH AS?

13 A. WELL, AT THE TIME --

14 Q. I'M JUST LOOKING FOR NAMES.

15 A. THE CITY OF CLAYTON. I BELIEVE I NEGOTIATED A
16 CONTRACT WITH THEM. I HAD PARTICIPATED IN WRITING PROPOSALS
17 FOR CITIES THAT CWS WAS NOT SUCCESSFUL IN GETTING THE
18 BUSINESS FROM.

19 Q. I'M LOOKING FOR NAMES OF CITIES.

20 A. CITY OF ALAMEDA, THE CENTRAL CONTRA COSTA SOLID
21 WASTE AUTHORITY, WHICH REPRESENTS FRANCHISES FOR A NUMBER OF
22 CITIES.

23 THAT MAY BE IT. IF I THINK OF ANYTHING ELSE, I
24 WILL COME BACK TO IT.

25 Q. IN ANY OF THOSE CIRCUMSTANCES, DID ANY OF THOSE
26 CITIES OR AUTHORITIES IMPOSE REQUIREMENTS ABOUT USING A
27 PARTICULAR UNION?

28 A. NOT DIRECTLY.

SUE HERFURTH, CSR #9645

1 Q. WHAT DOES THAT MEAN?

2 A. WELL --

3 Q. WHEN YOU SAY NOT DIRECTLY, YOU MEAN NOT OFFICIALLY
4 OR SOMETHING ELSE?

5 A. I WOULD SAY OFFICIALLY IS A PROBABLY GOOD SYNONYM
6 FOR DIRECTLY.

7 Q. SO CAN YOU EXPLAIN WHAT YOU MEANT BY THAT LAST
8 ANSWER.

9 A. WELL, FOR EXAMPLE, AN EXAMPLE WOULD BE BEST. THE
10 CITY OF ALAMEDA, I RECALL THE TEAMSTERS COMING TO THE
11 COUNCIL MEETING, THIS WOULD BE TEAMSTER'S LOCAL 70, NOT
12 LOCAL 350 IN SAN JOSE. TEAMSTERS LOCAL 70 REPRESENTATIVES
13 COMING TO THE COUNCIL MEETING AND BEING VERY STRIDENT ABOUT
14 THE STANDING OF CERTAIN OF THE PROPOSERS WITH THE UNION AND
15 MAKING IT CLEAR TO THE COUNCIL THAT IT WOULD BE UNACCEPTABLE
16 TO THE TEAMSTERS IF CERTAIN PROPOSERS WERE SELECTED AND HAD
17 NOT EXECUTED A MEMORANDUM OF UNDERSTANDING WITH THE
18 TEAMSTERS.

19 Q. OKAY. LET ME SEE IF I CAN HONE IN ON MY POINT
20 HERE. THIS FIRST LINE OF THE ADDENDUM TALKS ABOUT THE CITY
21 REQUIRING HIGHER WAGES AND BENEFITS, CORRECT?

22 A. THAT'S CORRECT.

23 Q. AND DAVID DUONG TOLD YOU ABOUT, IN OCTOBER OF 2000,
24 ACCORDING TO NORCAL -- WHAT WAS IT AGAIN HE TOLD YOU?

25 A. THAT NORCAL HAD LEARNED THAT THEY WOULD NOT GET THE
26 CONTRACT AWARDED BY THE CITY COUNCIL IF CWS COULD NOT HAVE
27 TEAMSTER LABORERS.

28 Q. OKAY. HOW DID THAT STATEMENT TRANSLATE INTO THE

1 CITY REQUIRING HIGHER WAGES AND BENEFITS?

2 A. WELL, I ONLY KNOW FROM WHAT I HEARD --

3 Q. NO, NO, NO. ARE YOU THE PERSON WHO WROTE THAT
4 LANGUAGE?

5 A. YES.

6 Q. OKAY. SO THE INTRODUCTORY RECITAL HERE DOESN'T SAY
7 THE PARTIES HAVE LEARNED THAT THE CITY MAY NOT AWARD THE
8 CONTRACT. IT SAYS THE CITY MAY REQUIRE HIGHER WAGES AND
9 BENEFITS, CORRECT?

10 A. CORRECT.

11 Q. WAS SOMETHING LOST IN THE TRANSLATION, OR WAS THERE
12 SOME DESIGN TO CHANGE OR SOFTEN THE LANGUAGE FOR THE
13 DOCUMENT?

14 A. I BELIEVE IT'S THE LATTER.

15 Q. WHY DO YOU SAY THAT?

16 A. UH -- BECAUSE I BELIEVE IT WAS MADE VERY CLEAR TO
17 ME THAT BOB MORALES, THE SECRETARY-TREASURER OF THE
18 TEAMSTERS LOCAL 350, HAD MET WITH THE MAYOR, AND WHAT I HAD
19 HEARD WAS HE SECURED THE MAYOR'S SUPPORT FOR DENYING NORCAL
20 THE CONTRACT UNLESS NORCAL SUBCONTRACTOR CWS HIRED
21 TEAMSTERS.

22 Q. AND WHO DID YOU HEAR THAT FROM?

23 A. I BELIEVE I HEARD IT FROM DAVID DUONG.

24 Q. SO LET'S GO BACK TO YOUR PRIOR EXPERIENCE WITH
25 OTHER CITIES AND AUTHORITIES. HAD YOU EVER BEEN INVOLVED IN
26 A SIMILAR SITUATION IN THESE OTHER INSTANCES WHERE THE CITY,
27 DIRECTLY OR INDIRECTLY, WAS COMMUNICATING TO A BUSINESS
28 SEEKING A CONTRACT THAT THEY HAD TO USE TEAMSTERS OR THEY

SUE HERFURTH, CSR #9645

1331

1 WOULDN' T GET THE CONTRACT?

2 A. TEAMSTERS.

3 Q. SOME OTHER UNION WOULDN' T GET THE CONTRACT?

4 A. I COULD SAY THAT THE CITY OF OAKLAND, THE CITY
5 COUNCIL IN OAKLAND MORE OR LESS DEMANDED OF CALIFORNIA WASTE
6 SOLUTIONS THAT IT SETTLE ITS LABOR DISPUTE WITH THE
7 LONGSHOREMEN AT A TIME WHILE CWS DID NOT HAVE A CONTRACT
8 WITH THE LONGSHOREMEN, AND IN THAT RESPECT I WOULD HAVE TO
9 SAY YES.

10 Q. ISN' T THERE A DIFFERENCE BETWEEN THE SITUATION IN
11 OAKLAND AND THE SITUATION IN SAN JOSE?

12 A. THERE DEFINITELY ARE DIFFERENCES.

13 Q. WELL, LET ME BE MORE SPECIFIC.

14 IN THE ONE CASE, CWS' S ABILITY TO PERFORM ITS
15 CONTRACTED SERVICES WAS BEING IMPAIRED BECAUSE OF THE LABOR
16 DISRUPTION, CORRECT?

17 A. WE WERE GETTING IT DONE. IT DEPENDS UPON YOUR
18 DEFINITION OF IMPAIRED. IT WAS NOT A COMFORTABLE SITUATION,
19 BUT WE WERE GETTING THE WORK DONE.

20 Q. IN SAN JOSE, CWS HAD A UNION THAT IT HAD A
21 COLLECTIVE BARGAINING AGREEMENT WITH THE LONGSHOREMEN,
22 RIGHT?

23 A. YES.

24 Q. AND THERE WAS AN EXPANSION AGREEMENT, A LETTER FROM
25 DAVID AGREEING THAT CWS WOULD USE LONGSHOREMEN IN EXPANDING
26 ITS OPERATION WITHIN THE ILWU LOCAL 6 TERRITORY, CORRECT?

27 A. CORRECT.
28 Q. SO IT WASN'T A CASE OF HAVING A UNION OR NO UNION

SUE HERFURTH, CSR #9645

1332

1 AND HAVING STRIKES OR NO STRIKES; IT'S A CASE OF SWITCHING
2 UNIONS, WASN'T IT?

3 A. YES.

4 Q. WASN'T THAT SUBSTANTIALLY DIFFERENT FROM THE
5 SITUATION IN OAKLAND?

6 A. SUBSTANTIALLY DIFFERENT, YES. THE QUESTION YOU
7 ASKED ME WAS, HAD A GOVERNMENTAL ENTITY DIRECTED CWS, OR WAS
8 I AWARE OF A GOVERNMENTAL ENTITY DIRECTING THE COMPANY TO DO
9 SOMETHING WITH THE UNION.

10 Q. OKAY. I THINK THAT'S HOW YOU HEARD; I DON'T THINK
11 THAT WAS MY QUESTION.

12 A. I APOLOGIZE.

13 Q. THAT'S ALL RIGHT. IN ANY EVENT, WAS WHAT WAS GOING
14 ON IN SAN JOSE WITH REGARD TO CWS AND NORCAL IN THEIR
15 PROPOSAL IN OCTOBER 2000 IN YOUR MIND AT THE TIME DIFFERENT
16 FROM SITUATIONS YOU ENCOUNTERED IN THE PAST WITH OTHER
17 CITIES AND GOVERNMENTAL AUTHORITIES?

18 A. YES.

19 Q. AND WHY DO YOU SAY THAT?

20 A. WELL, FRANKLY, THE WHOLE THING WAS KIND OF SURREAL
21 TO ME.

22 Q. WHY DO YOU SAY THAT?

23 A. WELL, THE REQUEST FOR PROPOSALS ISSUED BY THE CITY
24 OF SAN JOSE REQUIRED THAT THE COMPANY, WHOEVER THE

25 SUCCESSFUL PROPOSER WAS, HI RE, OFFER WORK TO THE DI SPLACED
26 WORKERS FROM THE EXI STING CONTRACT.

27 Q. OKAY.

28 A. AND CWS WAS CERTAINLY PREPARED TO DO THAT. I GUESS

SUE HERFURTH, CSR #9645

1333

1 THE RFP ALSO, THE CITY HAD BEEN VERY CLEAR THAT THEY HAD A
2 PREVAI LING WAGE REQUIREMENT FOR THE DRIVERS OF THE REFUSE
3 VEHICLES, BUT THEY DID NOT HAVE A PREVAI LING WAGE
4 REQUIREMENT FOR THE SORTERS IN THE MATERIALS RECOVERY
5 FACI LITY.

6 AND I BELIEVE THAT THEIR STATED REASON FOR THAT,
7 IF I RECALL CORRECTLY, WAS THAT THEY REGARDED THE COLLECTION
8 WORK DONE BY THE REFUSE DRIVERS AS BEING DIRECT PUBLIC WORKS
9 CONTRACTING BECAUSE THE WORK WAS BEING DONE ON CITY
10 PROPERTY, AND THEY REGARDED THE STREETS AS CITY PROPERTY,
11 WHEREAS THE SORTING OF THE MATERIALS AND THE MATERIAL
12 RECOVERY FACI LITY WAS NOT NECESSARI LY A CONTRACTED PUBLIC
13 ACTIVI TY.

14 AND SO THEY HAD THE REQUIREMENT, THEY HAD THE
15 LABOR PEACE REQUIREMENT, AND THEY HAD THE REQUIREMENT THAT
16 THE DI SPLACED WORKERS BE OFFERED EMPLOYMENT BY THE NEW
17 CONTRACTOR, BUT NOT A WAGE REQUIREMENT AS SUCH.

18 Q. SO, IN OTHER WORDS, THERE IS NO REQUIREMENT IN THE
19 RFP THAT THE DI SPLACED WORKERS BE GUARANTEED ANY MINI MUM
20 WAGES OR BENEFITS?

21 A. NOT BEYOND THOSE IN OTHER STATUTORY REQUIREMENTS.

22 Q. RIGHT. IN OTHER WORDS, THEY DI DN' T HAVE TO HI RE

23 THE DISPLACED WORKERS AT THE EXISTING WAGES AND BENEFITS?

24 A. THAT WAS MY UNDERSTANDING.

25 Q. JUST TO DRIVE HOME THE POINT, WITH REGARD TO PUBLIC
26 WORKS VERSUS PRIVATE WORKS, WOULD THAT BE ANALOGOUS TO IF
27 THE CITY CONVENTION CENTER HIRES CARPENTERS TO INSTALL
28 CABINETS, THEY HAVE TO BE PAID PREVAILING WAGE, BUT THE

SUE HERFURTH, CSR #9645

1334

1 FACTORY WHERE THE CABINETS ARE MADE ARE NOT COVERED BY
2 PREVAILING WAGE. IS THAT HOW IT WORKS?

3 A. THIS IS NOT AN AREA OF MY EXPERTISE.

4 Q. IS THAT YOUR UNDERSTANDING?

5 A. I'M NOT SURE I'M COMFORTABLE WITH THE ANALOGY. I'M
6 COMFORTABLE WITH WHAT I TOLD YOU.

7 Q. OKAY. I HAVE WHAT APPEARS TO BE AN E-MAIL MESSAGE;
8 IT'S ACTUALLY TWO. THE ORIGINAL MESSAGE APPEARS TO BE FROM
9 PAUL ROTTENBERG TO M. SANGIACOMO, AND IT'S DATED OCTOBER 9,
10 2000, AND THE TIME IS 2:27 P.M., AND THEN THERE'S A, APPEARS
11 TO BE A REPLY AT THE TOP FROM MICHAEL SANGIACOMO TO PAUL
12 ROTTENBERG, SAME DATE, AT 4:58 PM.

13 I'LL ASK THAT BE MARKED AS EXHIBIT 101.

14 THE FOREPERSON: SO MARKED.

15 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
16 JURY EXHIBIT 101.)

17 BY MR. FINKELSTEIN:

18 Q. WOULD YOU LOOK AT EXHIBIT 101 AND TELL US IF YOU'VE
19 SEEN THIS DOCUMENT BEFORE.

20 A. THAT'S THE SAME AS THIS?

21 Q. YES. YOU HAVE THE EXHIBIT IN FRONT OF YOU, AND I
22 HAVE IT UP ON THE SCREEN AS WELL.

23 A. DID YOU WANT ME TO READ THE WHOLE THING?

24 Q. I HAVE ASKED THE QUESTION BEFORE. HAVE YOU SEEN
25 THIS E-MAIL BEFORE?

26 A. YES, I HAVE.

27 Q. WHAT IS EXHIBIT 101; CAN YOU IDENTIFY IT FOR US.

28 A. IT'S AN E-MAIL FROM ME TO MIKE SANGIACOMO AND A

SUE HERFURTH, CSR #9645

1335

1 RESPONSE FROM MIKE SANGIACOMO TO ME, BUT IT IS NOT COMPLETE
2 BECAUSE IT LACKS THE ATTACHMENT THAT MIKE SANGIACOMO
3 REFERENCES IN HIS TEXT.

4 Q. I UNDERSTAND. THIS IS A DOCUMENT THAT YOUR COUNSEL
5 PRODUCED TO US ON A DISK?

6 A. OKAY.

7 Q. DID YOU RECEIVE A SUBPOENA TO PRODUCE MATERIALS TO
8 THE GRAND JURY?

9 A. YES, I DID.

10 Q. DID YOU SEARCH FOR MATERIALS RESPONSIVE TO THE
11 SUBPOENA?

12 A. YES.

13 Q. DID YOU TURN THEM OVER TO YOUR LAWYER?

14 A. YES, I DID.

15 Q. YOU INSTRUCTED HIM TO TURN IT OVER TO US IN ORDER
16 TO COMPLY WITH THE SUBPOENA?

17 A. YES.

18 Q. IS IT POSSIBLE WE DON'T HAVE THE ATTACHMENT BECAUSE

19 YOU DIDN' T FIND THE ATTACHMENT, OR IS THERE SOME OTHER
20 EXPLANATION?

21 A. UH -- I ASSUME THAT HE ATTACHED, THE ATTACHMENT
22 CAME WITH THE COMPLETE E-MAIL. WHEN I COPY THE E-MAIL, THE
23 ATTACHMENT SHOULD COME WITH IT, SO MY SPECULATION IS THAT
24 YOU HAVE IT.

25 Q. WE JUST DIDN' T PRINT IT OUT?

26 A. THAT WOULD BE MY GUESS.

27 Q. OTHER THAN THE ATTACHMENT, IS THIS AN ACCURATE COPY
28 OF AN E-MAIL YOU SENT TO MIKE SANGIACOMO AND HIS REPLY MINUS

SUE HERFURTH, CSR #9645

1336

1 THE ATTACHMENT?

2 A. I HAVEN' T LOOKED AT IT PROBABLY SINCE THE DAY I
3 RECEIVED IT, BUT I' M GOING TO ACCEPT IT IS THE SAME FORM IN
4 WHICH I RECEIVED IT.

5 Q. NO, NO NO. YOU GOT A SUBPOENA, OKAY, TO PRODUCE
6 MATERIALS RELEVANT TO THIS INVESTIGATION. OKAY? IF YOU' RE
7 NOT ABLE TO AUTHENTICATE THIS, I WOULD LIKE YOU TO STEP DOWN
8 FROM THE WITNESS STAND, TALK TO YOUR LAWYER ABOUT IT, AND
9 COME BACK IN THE ROOM AND LET' S FIGURE OUT HOW WE ARE GOING
10 TO AUTHENTICATE THIS. OKAY?

11 A. I' M ABSOLUTELY COMFORTABLE SAYING THIS IS INDEED
12 THE E-MAIL I SENT AND THE E-MAIL I RECEIVED.

13 Q. WAS THAT BACK ON OCTOBER 9, 2000?

14 A. YES.

15 Q. AND DO YOU HAVE ANY REASON TO BELIEVE THAT THE
16 TIMES INDICATED IN THE E-MAIL ARE NOT ACCURATE?

- 17 A. I DO NOT HAVE ANY REASON TO BELIEVE THAT.
- 18 Q. NOW, DOES THIS E-MAIL INDICATE TO YOU THAT AS OF
- 19 THE AFTERNOON OF OCTOBER 9, YOU WERE STILL WORKING ON THE
- 20 WORDING OF THIS ADDENDUM?
- 21 A. I'M SORRY. CAN YOU SAY THAT AGAIN, PLEASE.
- 22 Q. YES. DOES THIS E-MAIL INDICATE TO YOU THAT AS OF
- 23 THE AFTERNOON OF OCTOBER 9, 2000, YOU WERE STILL WORKING ON
- 24 THE WORDING OF THE ADDENDUM?
- 25 A. YES.
- 26 Q. AND IF YOU LOOK AT YOUR DRAFT, WHICH IS BENEATH
- 27 YOUR NAME, CORRECT?
- 28 A. CORRECT.

SUE HERFURTH, CSR #9645

1337

- 1 Q. YOUR DRAFT READS:
- 2 THE PARTIES HAVE LEARNED THAT THE CITY OF SAN
- 3 JOSE AND/OR ONE OR MORE UNION LOCALS IN SAN JOSE
- 4 MAY REQUIRE CALIFORNIA WASTE SOLUTIONS AND NORCAL
- 5 WASTE SYSTEMS TO PROVIDE WAGE AND BENEFIT PACKAGES
- 6 THAT ARE DIFFERENT THAN CWS' S CURRENT WAGE BENEFIT
- 7 PACKAGES.
- 8 CORRECT?
- 9 A. CORRECT.
- 10 Q. OKAY. SO APPARENTLY IN AN EARLIER DRAFT, THE
- 11 REQUIREMENT OF DIFFERENT WAGES AND BENEFITS WAS STATED AS
- 12 COMING FROM BOTH THE CITY AND ONE OR MORE LOCAL UNIONS,
- 13 CORRECT?
- 14 A. THAT WAS MY INTERPRETATION OF WHAT DAVE TOLD ME.

15 Q. OKAY. IN THE FINAL VERSION, THE LOCAL UNIONS PART
16 WAS TAKEN OUT?

17 A. CORRECT.

18 Q. THAT WAS AT THE REQUEST OF MICHAEL SANGIACOMO?

19 A. WELL, I BELIEVE THAT HIS DRAFT IS THE FIRST ONE
20 THAT HAD THOSE REFERENCES REMOVED, BUT IT MAY HAVE BEEN
21 SOMETHING THAT WE HAD DISCUSSED AND AGREED TO, AND I DON'T
22 RECALL, BUT I DON'T REMEMBER DISCUSSING MODIFICATIONS WITH
23 HIM, SO I THINK HE JUST WENT AND CHANGED IT AND SENT IT BACK
24 TO ME IN THAT FORM.

25 Q. WHY DON'T WE -- IT'S ALMOST THE NOON HOUR. BEFORE
26 GOING FURTHER WITH THIS ISSUE, I THINK IT WOULD PROBABLY
27 MAKE SENSE TO RECESS AND SEE IF WE CAN LOCATE THE ATTACHMENT
28 IN THE DISK YOU PROVIDED, AND THEN WE'LL HAVE YOU BACK AT

SUE HERFURTH, CSR #9645

1338

1 1:30.

2 A. WOULD YOU LIKE ME TO LOOK FOR IT AS WELL?

3 Q. YES, PLEASE. AND IF YOU CAN PRINT OUT A BETTER
4 COPY -- YOU GAVE THIS TO US AS AN OUTLOOK PST FILE?

5 A. CORRECT.

6 Q. BECAUSE OF THE E-MAIL PROGRAM WE USE IN MY OFFICE,
7 WE HAVE PROBLEMS WITH THAT, SO MAYBE IT WAS OUR FAULT. IF
8 YOU COULD PRINT IT OUT IN ITS ENTIRETY, THAT WOULD BE
9 HELPFUL.

10 A. I CAN LOOK FOR IT IN MY COMPUTER, WHICH IS IN MY
11 CAR A COUPLE OF BLOCKS AWAY. IF I CAN FIND IT, I CAN TRY TO
12 FIGURE OUT SOME WAY TO CONVEY IT TO YOU. IF I HAVE A FLASH

13 DRIVE --

14 Q. THAT WOULD BE FINE. WE HAVE AN ADMONITION THE
15 FOREPERSON WILL READ TO YOU.

16 THE FOREPERSON: I NEED TO READ YOU THE ADMONITION
17 OF CONFIDENTIALITY. YOU'RE ADMONISHED NOT TO REVEAL TO ANY
18 PERSON, EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS WERE
19 ASKED OR WHAT RESPONSES WERE GIVEN OR ANY OTHER MATTERS
20 CONCERNING THE NATURE OR SUBJECT OF THE GRAND JURY'S
21 INVESTIGATION WHICH YOU LEARNED DURING YOUR APPEARANCE
22 BEFORE THE GRAND JURY, UNLESS AND UNTIL SUCH TIME AS A
23 TRANSCRIPT OF THE GRAND JURY PROCEEDINGS IS MADE PUBLIC.
24 VIOLATION OF THIS ADMONITION MAY BE PUNISHABLE AS A CONTEMPT
25 OF COURT. DO YOU UNDERSTAND THAT?

26 THE WITNESS: I CAN SPEAK TO MY ATTORNEY?

27 MR. FINKELSTEIN: YOU CAN SPEAK TO YOUR ATTORNEY
28 IF HE OR SHE AGREES TO BE BOUND BY THE ADMONITION NOT TO

SUE HERFURTH, CSR #9645

1339

1 FURTHER DISCLOSE THE INFORMATION.

2 THE WITNESS: OKAY. THAT I UNDERSTAND.

3 MR. FINKELSTEIN: THANK YOU VERY MUCH. SEE YOU AT
4 1:30.

5 (THE LUNCHEON RECESS WAS TAKEN.)
6
7
8
9
10

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUE HERFURTH, CSR #9645

1340

1 SAN JOSE, CALIFORNIA APRIL 13, 2006
2
3 AFTERNOON SESSION:
4 THE FOREMAN: LET THE RECORD SHOW ALL GRAND JURORS
5 ARE PRESENT EXCEPT (NAME REDACTED).
6 PAUL ROTTENBERG,
7 HAVING BEEN PREVIOUSLY SWORN, TESTIFIED ON HIS OATH AS
8 FOLLOWS:

9 BY MR. FINKELSTEIN:

10 Q. MR. ROTTENBERG, I'LL JUST CAUTION YOU YOU'RE STILL
11 UNDER OATH, HAVING BEEN PREVIOUSLY SWORN IN THIS
12 INVESTIGATION; DO YOU UNDERSTAND THAT?

13 A. YES.

14 Q. WHEN WE BROKE, WE WERE TRYING TO FIND OUT WHAT
15 HAPPENED TO THE ATTACHMENT ON THE OCTOBER 9 E-MAIL THAT WAS
16 MARKED AS EXHIBIT 10.

17 I'M GOING TO MARK AS EXHIBIT 102 AN E-MAIL FROM
18 MICHAEL SANGIACOMO TO PAUL ROTTENBERG, ALSO DATED OCTOBER 9,
19 2000. THIS ONE'S TIME STAMP IS 4:33 P.M., AND IT'S A
20 ONE-PAGE E-MAIL WITH A ONE-PAGE ATTACHMENT.

21 THE FOREPERSON: SO MARKED.

22 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
23 JURY EXHIBIT 102.)

24 BY MR. FINKELSTEIN:

25 Q. CAN YOU LOOK AT EXHIBIT 102 AND TELL US WHAT IT IS,
26 PLEASE.

27 A. THIS IS AN E-MAIL FROM MICHAEL SANGIACOMO TO ME
28 WITH THE ADDENDUM ATTACHED.

SUE HERFURTH, CSR #9645

1341

1 Q. THAT E-MAIL IS DATED, TIME STAMPED AT 4:33 P.M.?

2 A. THAT'S CORRECT.

3 Q. A LITTLE LESS THAN HALF AN HOUR EARLIER THAN THE
4 E-MAIL WE LOOKED AT BEFORE THE BREAK, CORRECT?

5 A. CORRECT.

6 Q. LET'S TAKE A LOOK AT THIS. SO AS YOU CAN SEE IN
Page 130

- 7 EXHIBIT 102, WHICH MAKES REFERENCE ALSO TO AN ATTACHMENT,
8 THE LITTLE ICON. THE WORD FILE IS INCLUDED IN THE E-MAIL,
9 CORRECT?
- 10 A. YES.
- 11 Q. IF WE GO BACK AND LOOK AT EXHIBIT 101, EVEN THOUGH
12 THERE IS A REFERENCE TO THE TEXT, TO THE E-MAIL, THERE IS NO
13 ICON?
- 14 A. THAT'S CORRECT.
- 15 Q. DOES THAT SUGGEST TO YOU THAT THE REFERENCE IN
16 MR. SANGIACOMO'S E-MAIL, THE ATTACHMENT REFERS TO THE
17 ATTACHMENT IN THE EARLIER E-MAIL?
- 18 A. IT COULD. I DON'T KNOW THAT I HAVE AN EXPLANATION
19 FOR IT --
- 20 Q. OVER THE LUNCH HOUR, DID YOU CHECK YOUR OWN
21 COMPUTER TO SEE IF THE LATER E-MAIL HAD AN ATTACHMENT?
- 22 A. YES, I DID.
- 23 Q. DID IT HAVE AN ATTACHMENT?
- 24 A. IT DID NOT.
- 25 Q. IF WE LOOK AT THE ATTACHMENT TO THE EARLIER E-MAIL,
26 THIS APPEARS TO BE A REVISION TO YOUR DRAFT OF THE ADDENDUM
27 LANGUAGE, CORRECT?
- 28 A. I'M SORRY, WHICH ONE IS THIS?

SUE HERFURTH, CSR #9645

1342

- 1 Q. THIS IS THE EARLIER E-MAIL, EXHIBIT 102, THE
2 ATTACHMENT.
- 3 A. THE ONE AT 4:33 P.M.? YES.
- 4 Q. NOW, WE'RE LOOKING AT THE WORD DOCUMENT THAT'S

5 ATTACHED TO IT?

6 A. CORRECT.

7 Q. THIS HAS A REVISION TO THE ADDENDUM LANGUAGE THAT
8 YOU DRAFTED, CORRECT?

9 A. WELL, I DIDN'T REVIEW THAT WHEN I LOOKED AT THEM; I
10 JUST COPIED THEM, SO --

11 Q. NO PROBLEM.

12 A. IF YOU POINT OUT TO ME --

13 Q. LET'S TAKE A LOOK. IF WE GO BACK TO EXHIBIT 101,
14 THE 4:58 P.M. E-MAIL.

15 THE PARTIES HAVE LEARNED THAT THE CITY OF SAN
16 JOSE AND/OR ONE OR MORE UNION LOCALS IN SAN JOSE
17 MAY REQUIRE.

18 CORRECT?

19 A. YES.

20 Q. NOW, LET'S GO BACK TO EXHIBIT 102, WHICH IS THE
21 4:33 P.M. E-MAIL. NOW THE REFERENCE TO ONE OR MORE LOCAL
22 UNIONS HAS BEEN REMOVED, CORRECT?

23 A. CORRECT.

24 Q. SO IT WAS MR. SANGIACOMO WHO REMOVED THAT REFERENCE
25 FROM THE ADDENDUM?

26 A. I DON'T KNOW WHICH ONE OF US REMOVED IT. I GUESS
27 IT WOULD SEEM THAT IT WAS MR. SANGIACOMO, BUT WE MAY HAVE
28 DISCUSSED IT ON THE PHONE. HE MAY HAVE TOLD ME HE WANTED TO

SUE HERFURTH, CSR #9645

1343

1 DO IT, WE MAY HAVE AGREED; WE MAY NOT HAVE DISCUSSED IT, I
2 DON'T KNOW.

3 Q. GOING BACK TO EXHIBIT 102, THE 4:33 P.M. E-MAIL,
4 DOES MR. SANGIACOMO SAY:

5 PAUL, ATTACHED IS THE ADDENDUM MODIFIED AS I
6 BELIEVE IS APPROPRIATE.

7 A. YES.

8 Q. AND YOU'RE THE PAUL THAT MR. SANGIACOMO IS
9 REFERRING TO?

10 A. YES.

11 Q. AND THE ADDENDUM MODIFIED AS MR. SANGIACOMO
12 BELIEVES IS APPROPRIATE IS THE ADDENDUM THAT REMOVED THE
13 REFERENCE TO THE UNION, CORRECT?

14 A. CORRECT.

15 Q. SO IS THERE SOMETHING WE'RE MISSING HERE ABOUT WHY
16 YOU'RE UNABLE TO SAY MR. SANGIACOMO IS THE ONE WHO REMOVED
17 THE REFERENCE TO THE UNION?

18 A. ONLY THAT I DIDN'T READ THE DOCUMENTS CAREFULLY
19 ENOUGH JUST NOW TO MAKE SURE THERE IS NOT OTHER CHANGES.

20 Q. WHY DON'T YOU TAKE A MOMENT AND LOOK AT THEM.

21 A. COULD I HAVE THE OTHER ONE AS WELL?

22 Q. SURE.

23 A. I WOULD BE WILLING TO ACCEPT IF YOU TOLD ME THERE
24 WERE NO MORE CHANGES --

25 Q. NO -- I'LL SHOW YOU EXHIBIT 15.

26 A. THANK YOU.

27 Q. WE'LL ALSO SHOW YOU EXHIBIT 101.

28 A. I'M LOOKING AT THE SAME THING HERE.

SUE HERFURTH, CSR #9645

1 Q. THE COMPARISON BETWEEN 101 AND 102.

2 A. THERE ARE TWO OTHER CHANGES OR DIFFERENCES.

3 Q. WHAT ARE THEY?

4 A. ONE OF THEM, IN PARAGRAPH THREE ON EXHIBIT 101, HAS
5 A PHRASE AT THE LAST LINE OF PARAGRAPH THREE THAT SAYS "AS
6 MODIFIED FROM TIME TO TIME," WHICH DOESN'T APPEAR IN
7 PARAGRAPH THREE, I BELIEVE, OR WHAT THE COROLLARY PARAGRAPH
8 WOULD BE IN THE OTHER EXHIBIT.

9 AND THERE IS A REFERENCE ON 101 IN PARAGRAPH TWO
10 TO THE ABOVE-MENTIONED UNION LOCALS, WHICH DOESN'T APPEAR IN
11 THE OTHER EXHIBIT. BUT ASIDE FROM THOSE THREE DIFFERENCES,
12 THEY APPEAR TO BE THE SAME.

13 Q. BUT MY QUESTION IS, WAS IT NOT MICHAEL SANGIACOMO
14 WHO REMOVED THE REFERENCE TO THE UNIONS IN THE ADDENDUM
15 LANGUAGE?

16 A. YES, IT WAS.

17 Q. AND MR. SANGIACOMO WORKED FOR NORCAL, RIGHT?

18 A. CORRECT.

19 Q. ACCORDING TO DAVID DUONG, IT WAS NORCAL THAT HAD
20 DEALT WITH THE CITY OFFICIALS, NOT CWS, ON THIS ISSUE,
21 CORRECT?

22 A. ABSOLUTELY CORRECT.

23 Q. I ASSUME HE FELT HE WAS CLOSER TO THE SOURCE;
24 THEREFORE, PROBABLY MORE ACCURATE ABOUT WHAT EXACTLY -- MORE
25 ACCURATE ABOUT WHO WAS REQUIRING WHAT, CORRECT?

26 A. TO MY KNOWLEDGE, DAVID DUONG HADN'T SPOKEN WITH
27 ANYBODY FROM THE CITY OR WITH ANYBODY FROM THE UNION, FROM
28 LOCAL 350.

1 Q. HE HAD NOT SPOKEN WITH EITHER ONE?

2 A. THAT IS MY UNDERSTANDING.

3 Q. YOU TOLD US THIS MORNING THAT YOU THOUGHT THAT YOU
4 HAD STARTED WORKING ON THE ADDENDUM LANGUAGE THE WEEK OF
5 OCTOBER 2, CORRECT?

6 A. YES.

7 Q. OKAY. LET ME SHOW YOU GRAND JURY EXHIBIT NUMBER 9.
8 HAVE YOU SEEN THIS LETTER BEFORE?

9 A. YES, I HAVE.

10 Q. DID YOU ASSIST DAVID IN WRITING THE LETTER?

11 A. YES.

12 Q. IN THIS LETTER, WHICH IS DATED OCTOBER 4, 2000,
13 DOES DAVID REITERATE TO THE MAYOR THAT CWS INTENDS TO USE
14 ILWU WORKERS ON YOUR EXISTING COLLECTIVE BARGAINING
15 AGREEMENT?

16 A. YES.

17 Q. OKAY. SO IF -- WE KNOW THAT AT SOME POINT DAVE
18 DUONG TOLD YOU THAT HE HAD LEARNED FROM NORCAL THAT CWS
19 NEEDED TO USE TEAMSTERS TO GET THE CONTRACT, CORRECT?

20 A. YES.

21 Q. DOESN'T IT MAKE SENSE THAT THAT CONVERSATION MUST
22 HAVE OCCURRED AFTER THIS OCTOBER 4, 2000 LETTER?

23 A. YES.

24 Q. BECAUSE IT WOULD MAKE NO SENSE, IF DUONG WAS OF A
25 MINDSET HE HAD TO USE TEAMSTERS TO GET THE CONTRACT, THERE
26 WOULD BE NO PURPOSE SERVED BY SENDING A LETTER LIKE THIS TO
27 THE MAYOR REITERATING HE WAS GOING TO USE ILWU WORKERS,
28 WOULD THERE?

1 A. I WOULD AGREE THAT IT DOESN' T SEEM TO MAKE A LOT OF
2 SENSE; HOWEVER, I DON' T RECALL IF DAVID TOLD ME THAT HE HAD
3 HEARD FROM THE CITY OR FROM NORCAL THAT THE CITY HAD
4 CONCERNS ABOUT CWS' S ABILITY TO COMPLY WITH THE LABOR PEACE
5 COMPONENT OF THE RFP PROCESS, AND THAT' S WHY HE WROTE THE
6 LETTER.

7 Q. WHICH LETTER?

8 A. THIS LETTER.

9 Q. YOU TOLD US THIS MORNING THAT DAVID DUONG TOLD YOU
10 THAT HE HAD LEARNED FROM NORCAL THAT THEY WEREN' T GOING TO
11 GET THE CONTRACT UNLESS CWS SWITCHED TO THE TEAMSTERS.
12 ISN' T THAT THE SUBSTANCE OF WHAT HE SAID?

13 A. YES.

14 Q. IF HE HAD LEARNED THAT ON OCTOBER 4 OR BEFORE,
15 WOULD IT BE HELPFUL IN YOUR MIND FOR CWS TO BE TELLING THE
16 MAYOR THAT THEY ARE GOING TO USE ILWU WORKERS?

17 A. IF I WERE IN DAVID' S HEAD --

18 Q. I' M NOT ASKING YOU TO BE IN DAVID' S HEAD; I' M
19 ASKING YOU TO BE IN YOUR OWN HEAD. YOU WERE HIS CONSULTANT,
20 HIS ADVISER, RIGHT?

21 A. I GAVE HIM MY OPINIONS ON CERTAIN MATTERS. I
22 CERTAINLY DIDN' T TELL HIM WHAT TO DO.

23 Q. DID YOU, DO YOU BELIEVE -- AND YOU PARTICIPATED IN
24 THE DRAFTING OF THIS LETTER, RIGHT?

25 A. YES, I DID.

26 Q. OKAY. DOESN' T THIS SUGGEST TO YOU THAT THE
27 CONVERSATION WITH DAVID DUONG ABOUT LEARNING FROM NORCAL

28 THAT THEY HAD TO GO WITH TEAMSTERS IN ORDER TO GET THE

SUE HERFURTH, CSR #9645

1347

1 CONTRACT OCCURRED AFTER THIS LETTER WAS SENT OUT?

2 A. WHAT I THINK I'M TRYING TO SAY TO YOU, SIR, IS THAT
3 I BELIEVE THAT IT IS ENTIRELY POSSIBLE THAT NORCAL
4 COMMUNICATED TO DAVID THAT THE CITY HAD CONCERNS ABOUT HIS
5 UNION AGREEMENTS AND WANTED TEAMSTERS.

6 OR MAYBE IT WASN'T ENTIRELY QUITE THAT CLEAR AND
7 DAVID DECIDED TO CLARIFY HIS POSITION WITH RESPECT TO UNIONS
8 AND SAID, LOOK, MR. MAYOR, I HAVE EXISTING UNION AGREEMENTS,
9 AND THEY ARE GOOD AND VALID AGREEMENTS WITH GOOD, UPSTANDING
10 UNIONS. THIS IS WHAT I'M BOUND TO DO.

11 AND THAT MAY HAVE CAUSED NORCAL TO COME BACK AND
12 SAY, WELL, CWS, WHAT WE REALLY MEANT IS YOU HAVE TO USE
13 TEAMSTERS, AND WE'LL PAY FOR IT. SO I'M NOT ENTIRELY SURE
14 THAT THE ISSUE OF LOCAL 350 DID NOT COME UP BEFORE THIS
15 LETTER WAS SENT, IF INDEED THE LETTER WAS SENT, BECAUSE I
16 DON'T HAVE PERSONAL KNOWLEDGE IT WENT TO THE MAYOR. I ONLY
17 KNOW I WROTE IT.

18 Q. WE HAVE TESTIMONY THAT IT WAS SENT BY MR. DUONG.

19 A. I ACCEPT THAT.

20 Q. WOULD IT MAKE SENSE FOR YOU TO BE WORDING THE
21 ADDENDUM FOR NORCAL TO REIMBURSE CWS FOR THE EXTRA COST OF
22 SWITCHING TO TEAMSTERS BEFORE THIS LETTER, AND THEN AFTER
23 THAT, THIS LETTER WOULD HAVE GONE OUT?

24 A. NO, ABSOLUTELY NOT.

25 Q. OKAY. SO IS IT STILL YOUR RECOLLECTION THAT YOU

26 STARTED WORK, THAT YOU HAD THIS CONVERSATION WITH DAVID
27 DUONG ABOUT SWITCHING TO THE TEAMSTERS BEFORE THIS LETTER
28 WAS SENT?

SUE HERFURTH, CSR #9645

1348

1 A. I THINK WE MAY HAVE -- I GUESS WHAT I'M SAYING,
2 WHAT I THOUGHT I SAID A MOMENT AGO, WAS THE COMMUNICATION
3 FROM NORCAL MAY HAVE BEEN IN TWO PARTS, THE FIRST PART BEING
4 THE CITY HAS AN ISSUE ABOUT THE LABOR AGREEMENT AND WANTS
5 YOU TO USE TEAMSTERS. AND AFTER THE LETTER AND SOME
6 DISCUSSION, MAYBE WHAT HAPPENED WAS NORCAL CAME BACK AND
7 SAID, NO, NO, YOU HAVE TO USE TEAMSTERS OR WE'RE NOT GOING
8 TO GET THE CONTRACT. THAT'S WHEN THE DISCUSSION WITH PETER
9 SMITH ENSUED AND THE ADDENDUM STARTED BEING DRAFTED.

10 Q. WHAT IS YOUR BEST CURRENT RECOLLECTION ON THE
11 SEQUENCE OF EVENTS WITH RESPECT TO THE CONVERSATION WITH
12 DAVID DUONG REGARDING HIS LEARNING FROM NORCAL THAT CWS
13 NEEDED TO USE TEAMSTERS IN ORDER TO GET THE CONTRACT, THE
14 SENDING OUT OF THIS OCTOBER 4 LETTER, AND THE OCTOBER 9
15 ADDENDUM. CAN YOU TELL US WHAT YOU BELIEVE THE SEQUENCE OF
16 EVENTS TO BE?

17 A. I BELIEVE THE SEQUENCE OF EVENTS WAS AS I DESCRIBED
18 A MOMENT AGO, HYPOTHETICALLY.

19 Q. I DON'T WANT A HYPOTHETICAL ANSWER. EITHER YOU
20 REMEMBER OR DON'T.

21 A. I BELIEVE I REMEMBER. MY BEST RECOLLECTION, DAVID
22 CAME TO ME AND SAID, NORCAL AND/OR THE CITY HAS A PROBLEM,
23 OR THE TEAMSTERS HAVE A PROBLEM, THEY ARE MAKING IT THE

24 CITY' S PROBLEM; THEREFORE, NORCAL' S PROBLEM, ABOUT THE ILWU.
25 AND WE NEED TO MAKE VERY CLEAR TO THE MAYOR THAT WE HAVE
26 EXISTING VALID LABOR AGREEMENTS THAT WE INTEND TO HONOR AND
27 WE' LL ADHERE TO THE LABOR PEACE PROVISIONS OF THE RFP AND
28 THE CONTRACT THAT THE RFP PROMULGATES WITH NORCAL.

SUE HERFURTH, CSR #9645

1349

1 SO I WANT TO SEND THIS LETTER TO THE MAYOR' S
2 OFFICE TELLING HIM THAT WE' RE A GOOD UNION COMPANY, AND
3 DON' T WORRY, ALL THOSE WORKERS WILL BE UNION.

4 SO I DRAFTED THAT LETTER, DAVID AND I PROBABLY HAD
5 SOME BACK AND FORTH ON IT AND CAME UP WITH SOME FINAL
6 CONTENT. APPARENTLY, HE SENT THE LETTER, AND SHORTLY
7 THEREAFTER HE WAS CONTACTED BY NORCAL WHO SAID, I ASSUME,
8 BECAUSE DAVID COMMUNICATED IT TO ME, LOOKS LIKE THE ILWU
9 JUST ISN' T GOING TO FLY. BOB MORALES HAS BEEN UP THERE WITH
10 THE MAYOR, AND WE' RE GOING TO HAVE TO BE TEAMSTER.

11 THAT' S WHEN DAVID SAID, DRAFT THIS AGREEMENT THAT
12 SAYS NORCAL HAS TO COVER THE COST, BECAUSE WE CAN' T
13 EITHER.

14 Q. SO THE DRAFTING OF THIS AGREEMENT, YOU MEAN THE
15 ADDENDUM OF OCTOBER 9?

16 A. CORRECT.

17 Q. SO YOU AGREE THAT THE DRAFTING OF THE ADDENDUM
18 WOULD HAVE BEEN AFTER THE OCTOBER 4 LETTER?

19 A. ABSOLUTELY.

20 Q. BECAUSE USING THE ILWU WORKERS WOULD NOT REQUIRE
21 ADDITIONAL COMPENSATION FROM NORCAL TO CWS?

22 A. CORRECT.

23 Q. THERE WOULD BE NO POINT IN MAKING AN ADDENDUM FOR
24 EXTRA COMPENSATION WHERE NONE WAS NEEDED AS LONG AS YOU
25 STAYED WITH THE ILWU WORKERS?

26 A. CORRECT.

27 Q. NOW, WHY IS THERE NO REFERENCE TO THE TEAMSTERS IN
28 THE OCTOBER 9 ADDENDUM?

SUE HERFURTH, CSR #9645

1350

1 A. I BELIEVE I HAD ONE IN THERE, AND THEY TOOK IT OUT.
2 SO I DON' T KNOW WHY THEY TOOK IT OUT. I COULD SPECULATE.

3 Q. WHO TOOK IT OUT?

4 A. MIKE SANGIACOMO, APPARENTLY.

5 Q. WELL, WHEN YOU SAY APPARENTLY, YOU DON' T KNOW WHO
6 TOOK OUT THAT REFERENCE?

7 A. HE MAY HAVE HAD COUNSEL WORK ON IT. IT MAY NOT
8 HAVE BEEN HIS PERSONAL EDIT BUT --

9 Q. NORCAL TOOK IT OUT?

10 A. YES.

11 Q. THAT WAS COMMUNICATED TO YOU BY MIKE SANGIACOMO?

12 A. CORRECT.

13 Q. THAT' S ALL WE KNOW?

14 A. YES.

15 Q. OKAY. AFTER NORCAL WAS AWARDED THE CONTRACT TO
16 PROVIDE THE SERVICES, IN THE FALL OF 2002 DID YOU SPEAK WITH
17 ANY MEMBERS OF CITY COUNCIL CONCERNING EFFORTS FOR CWS TO
18 GET REIMBURSED BY NORCAL PURSUANT TO THIS AMENDMENT -- LET
19 ME WITHDRAW THAT QUESTION AND TRY TO BREAK IT UP.

20 THE SERVICES WERE SUPPOSED TO START JULY 1, '02,
21 CORRECT?
22 A. CORRECT.
23 Q. AND LET ME SHOW YOU EXHIBIT 16 BEFORE I MOVE ON
24 TO '02. DID YOU HELP VICTOR DUONG DRAFT THIS LETTER OF
25 OCTOBER 9, 2000 TO MAYOR GONZALES?
26 A. YES, I DID.
27 Q. AND IN THIS LETTER OF OCTOBER 9, 2000, CWS TELLS
28 THE MAYOR THAT IT'S GOING TO PAY SORTERS HIRED PURSUANT TO

SUE HERFURTH, CSR #9645

1351

1 CITY OF SAN JOSE RECYCLE PLUS CONTRACT AWARD WAGES AND
2 BENEFITS AT LEAST EQUIVALENT TO THOSE PRESENTLY BEING PAID
3 TO WORKERS OCCUPYING THOSE POSITIONS UNDER THE CURRENT
4 AGREEMENT IN SAN JOSE, CORRECT?
5 A. YES.
6 Q. AND SO THE REFERENCE HERE WAS TO THE WASTE
7 MANAGEMENT TEAMSTERS WORKERS?
8 A. THAT'S CORRECT.
9 Q. IS THERE SOME REASON THE WORD TEAMSTERS DOES NOT
10 APPEAR IN THIS DOCUMENT?
11 A. I'M SURE THERE IS.
12 Q. DO YOU KNOW WHY?
13 A. ONLY THAT I WAS TOLD NOT TO ADD IT IN THERE.
14 Q. WHO TOLD YOU THAT?
15 A. UH -- I BELIEVE IT WAS DAVID.
16 Q. DID HE SAY WHY HE DIDN'T WANT YOU TO EXPLICITLY
17 REFER TO THE TEAMSTERS IN THE LETTER?

18 A. UH -- HE DID, BUT -- YES, HE DID.
19 Q. WHAT DID HE SAY?
20 A. I DON'T ENTIRELY REMEMBER, BUT --
21 Q. TELL US THE PART YOU DO REMEMBER.
22 A. THE PART WAS IT WAS NOT GOOD POLITICS.
23 Q. WHAT DID THAT MEAN TO YOU?
24 A. WHAT IT MEANT TO ME WAS, YOU DON'T NAME THE UNION
25 THAT'S PUTTING THE POLITICAL PRESSURE TO MAKE THIS THING
26 HAPPEN.
27 Q. DID DAVID ACTUALLY SAY THAT, OR WAS THAT JUST YOUR
28 INTERPRETATION?

SUE HERFURTH, CSR #9645

1352

1 A. NO, I THINK IT WAS PRETTY CLOSE TO THAT, IS WE
2 DON'T WANT TO ACTUALLY IDENTIFY LOCAL TEAMSTERS 350.
3 Q. OKAY. NOW, I ASSUME YOU WORKED ON THIS BEFORE --
4 I DON'T ASSUME ANYTHING. DID YOU WORK ON THIS BEFORE OR
5 AFTER THE ADDENDUM WAS FINALIZED?
6 A. UH -- IT WAS AN EXCHANGE. VICTOR -- DAVID WAS OUT
7 OF TOWN, I WROTE THAT FOR VICTOR. HE, I BELIEVE, WAS IN
8 OAKLAND, AND I WAS IN NEVADA CITY. AND AS SOON AS MIKE
9 SANGIACOMO FAXED ME THE EXECUTED ADDENDUM, I RECEIVED IT,
10 READ IT, FOUND THAT IT WAS ACCEPTABLE AND WAS WHAT WE HAD
11 SENT; THEN I CALLED VICTOR AND SAID IT'S OKAY TO SEND THAT
12 LETTER TO THE MAYOR'S OFFICE.
13 CWS WASN'T GOING TO COMMIT TO WHAT'S IN THE LETTER
14 UNTIL WE HAD A COMMITMENT FROM NORCAL IN WRITING.
15 Q. THAT IT WOULD BE MADE WHOLE?

16 A. CORRECT.

17 Q. AND SO YOUR TESTIMONY IS THIS WASN'T THE FINAL
18 LETTER BY CWS TO SIMPLY PAY ILWU WORKERS THE SAME WAGES AND
19 BENEFITS AS THE WASTE -- TEAMSTERS' WORKERS WERE GETTING
20 PAID? INSTEAD OF SWITCHING UNIONS, IN OTHER WORDS, THERE IS
21 TWO POSSIBILITIES PRESENTED BY THIS LETTER.

22 ONE IS THAT CWS WAS SEEING IF THEY COULD SATISFY
23 THE CITY OR THE MAYOR'S DEMANDS BY SIMPLY UPPING THE WAGES
24 AND BENEFITS, BUT STILL RETAINING THE ILWU WORKERS. THAT'S
25 ONE POSSIBILITY FROM THIS LETTER.

26 THE OTHER IS THIS IS MEANT TO BE CODE FOR WE'RE
27 GOING TO GO WITH THE TEAMSTERS. THERE COULD BE A THIRD OR
28 FOURTH POSSIBILITY. WILL YOU TELL US WHICH IS THE CASE.

SUE HERFURTH, CSR #9645

1353

1 A. IT'S THE SECOND. THERE WAS NO POINT AT WHICH WE
2 BELIEVE THAT BOB MORALES WAS IN RON GONZALES'S OFFICE
3 ADVOCATING HIGHER WAGES FOR LONGSHOREMEN. WE HAD, I BELIEVE
4 IT WAS THE FOLLOWING DAY THAT AMY DEAN FROM THE --

5 Q. SOUTH BAY LABOR COUNCIL?

6 A. RIGHT, CENTRAL LABOR COUNCIL, SPOKE TO THE CITY
7 COUNCIL. I OVERHEARD HER IN THE HALL; IT WAS VERY CLEAR
8 THEY WERE WORKING TO KEEP LONGSHOREMEN OUT OF SAN JOSE.

9 MR. FINKELSTEIN: LET ME CAUTION THE JURY THAT'S
10 ANOTHER INSTANCE WE CALL HEARSAY, SO YOU CAN'T ACCEPT THAT
11 FOR THE TRUTH, JUST AS EVIDENCE OF WHAT SOMEONE MIGHT HAVE
12 SAID.

13 Q. WHO IS AMY DEAN TALKING TO?

14 A. BOB MORALES AND SOME OTHER FOLKS. TO WHO, I DON'T
15 RECALL EXACTLY.

16 Q. THIS WAS OUTSIDE THE COUNCIL CHAMBERS?

17 A. CORRECT.

18 Q. ON THE DAY OF THE FIRST COUNCIL VOTE IN THE NORCAL
19 PROPOSAL?

20 A. CORRECT. I BELIEVE THAT WAS THE 11TH.

21 Q. THE 10TH?

22 A. THE 10TH. AND WE UNDERSTOOD THAT IF WE PAID THOSE
23 HIGHER WAGES, THE DISPLACED MANAGEMENT WORKERS WOULD BE
24 COMING OVER. AND IF WE WEREN'T, THEN WE WOULD OBVIOUSLY BE
25 USING OUR OWN LONGSHOREMEN OR --

26 Q. YOUR WORKERS?

27 A. YEAH.

28 Q. LET ME ASK YOU THIS: DAVID HAD SIGNED AN EXPANSION

SUE HERFURTH, CSR #9645

1354

1 AGREEMENT WITH THE LONGSHOREMEN BACK IN, I THINK 1998; ISN'T
2 THAT CORRECT?

3 A. YES.

4 Q. THAT REQUIRED DAVID TO USE LONGSHOREMEN IF HE
5 EXPANDED HIS OPERATION, SAY, TO SAN JOSE, CORRECT?

6 A. ACTUALLY, LET ME BACK UP. I SAID YES -- I DON'T
7 KNOW THE DATE OF THAT EXPANSION AGREEMENT.

8 Q. WE HAPPEN TO HAVE A COPY. LET ME SHOW YOU WHAT HAS
9 BEEN MARKED AS GRAND JURY EXHIBIT 78. IT'S A LETTER FROM
10 DAVID DUONG DATED OCTOBER 20, 1998 TO ROBERTO FLOTTE AT THE
11 ILWU LOCAL 6 CONFIRMING THAT AS PART OF THE CONTRACT BETWEEN

12 I LWU LOCAL 6 AND CWS, LOCAL 6 SHALL REPRESENT CWS' S MATERIAL
13 PROCESSORS AND PROCESSING EQUIPMENT OPERATORS IN ANY NEW
14 FACILITIES CWS OPENS IN GEOGRAPHIC AREAS WHERE LOCAL 6
15 OPERATES.

16 DO YOU SEE THAT?

17 A. YES.

18 Q. WERE YOU GENERALLY AWARE OF THE EXISTENCE OF THAT
19 SUPPLEMENTARY AGREEMENT?

20 A. I WROTE IT.

21 Q. YOU WROTE IT?

22 A. YES.

23 Q. I TAKE IT YOU KNEW ABOUT THE AGREEMENT?

24 A. YES.

25 Q. SO DO YOU NOW RECALL THAT IN 1998, AS PART OF THE
26 SUPPLEMENT TO THE COLLECTIVE BARGAINING AGREEMENT BETWEEN
27 CWS AND I LWU LOCAL 6, THERE WAS A FURTHER AGREEMENT THAT ANY
28 EXPANSION FACILITY WITHIN A CERTAIN GEOGRAPHICAL REGION IS

SUE HERFURTH, CSR #9645

1355

1 TO BE COVERED BY THE EXISTING CBA?

2 A. CORRECT.

3 Q. THAT WOULD INCLUDE THE CITY OF SAN JOSE, CORRECT?

4 A. WE BELIEVED IT DID, AND I THINK FOUR YEARS LATER OR
5 TWO YEARS LATER, AND I GUESS THE I LWU BELIEVED IT DID --

6 Q. THAT'S FINE. SO MY QUESTION TO YOU IS THIS: HOW
7 WERE YOU ABLE TO SWITCH TO THE TEAMSTERS AND GET OUT FROM
8 UNDER THIS AGREEMENT WITH THE I LWU?

9 A. WELL, I SUPPOSE THAT THERE'S TWO REASONS.

10 ONE REASON WOULD BE THAT THE ILWU WAS IN A GOOD
11 DEAL OF TURMOIL AT THE TIME, AND IT WAS NEVER A PARTICULARLY
12 WELL-RUN UNION, AND THEY HARDLY WOULD HAVE NOTICED IF WE HAD
13 EXPANDED AND DIDN'T CALL THEM AND TELL THEM.

14 Q. THEY HARDLY WOULD HAVE NOTICED -- WERE YOU AT THE
15 COUNCIL MEETING ON OCTOBER 10, 2000?

16 A. YES, THEY WERE THERE.

17 Q. DIDN'T ROBERTO FLOTTE SPEAK TO THE COUNCIL AT THAT
18 TIME?

19 A. YES.

20 Q. SO CAN WE ASSUME HE HAD SOME CLUE THAT HE MIGHT BE
21 IN LINE TO REPRESENT WORKERS AT CWS'S SAN JOSE FACILITY IF
22 CWS GOT THE CONTRACT?

23 A. YES.

24 Q. OKAY. SO THAT FIRST REASON DOESN'T SEEM TO HOLD
25 WATER, DOES IT?

26 A. I THINK WE HELPED HIM TO RECOGNIZE THE OPPORTUNITY.

27 Q. OKAY. NEXT?

28 A. WELL, THERE WAS A, THE TEAMSTER'S LOCAL 350 FILED

SUE HERFURTH, CSR #9645

1356

1 WHATEVER THE APPROPRIATE COMPLAINT PROCEDURE IS WITH THE
2 NATIONAL LABOR RELATIONS BOARD IN OAKLAND, ARGUING THAT
3 CWS'S ACCRETION AGREEMENT WITH THE LONGSHOREMEN WAS NOT
4 LEGAL.

5 Q. OKAY. AND THAT DIDN'T GO ANYWHERE, DID IT?

6 A. AS A MATTER OF FACT, IT DID.

7 Q. DID THE NLRB EVER ISSUE A COMPLAINT?

- 8 A. THE NLRB ISSUED A RULING, A FINDING THAT THE
9 ACCRETION AGREEMENT WAS NOT VALID AND --
- 10 Q. WAIT, WAIT. THE NLRB ISSUED A FINDING?
- 11 A. YES, THEY DID, TO THE BEST OF MY RECOLLECTION.
- 12 Q. ARE YOU SURE YOU'RE TALKING ABOUT CWS AND ILWU
13 LOCAL 6 OR SOME OTHER --
- 14 A. MY RECOLLECTION IS THAT THE NLRB ISSUED A FINDING
15 THAT CWS' S ACCRETION AGREEMENT WITH THE LONGSHOREMEN COULD
16 NOT APPLY TO SAN JOSE, AND THAT CWS WOULD BE REQUIRED TO GO
17 INTO SAN JOSE WITHOUT ANY EXISTING LABOR AGREEMENTS.
- 18 Q. DO YOU HAVE A COPY OF THAT FINDING?
- 19 A. IF I HAVE ONE, I PRODUCED IT TO CWS' S COUNSEL, AND
20 THAT ENTIRE DOCUMENT PRODUCTION WAS SUPPOSED TO HAVE BEEN
21 AVAILABLE TO YOU THROUGH THE AGREEMENT BETWEEN NORCAL AND
22 YOUR OFFICE AND CWS.
- 23 Q. SO THE TEAMSTERS NEVER WITHDREW THEIR COMPLAINT
24 WITH THE NLRB?
- 25 A. I DON'T BELIEVE THAT THE COMPLAINT WAS WITHDRAWN; I
26 BELIEVE IT WAS RESOLVED. THE NAME OF THE CASE OFFICER WAS
27 BARBARA LUNA, L-U-N-A.
- 28 Q. THAT' S ALL RIGHT, HOLD ON.

SUE HERFURTH, CSR #9645

1357

- 1 A. I' M CERTAINLY WILLING TO BE WRONG ABOUT THIS.
- 2 Q. LET ME SHOW YOU ANOTHER DOCUMENT. LET ME SHOW YOU
3 WHAT' S BEEN MARKED AS PEOPLE' S EXHIBIT, GRAND JURY EXHIBIT
4 65. YOU SAID BARBARA LUNA WAS THE CASE WORKER FROM THE
5 NLRB?

- 6 A. CORRECT.
- 7 Q. AND HERE WE HAVE A DECEMBER 6, 2000 LETTER TO
- 8 BARBARA LUNA AT THE NLRB REGION 32 FROM DUANE BEESOM
- 9 ENCLOSING A REQUEST TO WITHDRAW THE COMPLAINT AGAINST
- 10 CALIFORNIA WASTE SOLUTIONS, CORRECT?
- 11 A. CORRECT.
- 12 Q. WERE YOU WRONG?
- 13 A. INDEED.
- 14 Q. SO WHERE DID YOU GET THIS IDEA THAT THE NLRB MADE A
- 15 FINDING ABOUT THE ACCRETION AGREEMENT BEING VALID?
- 16 A. I HAD A MEETING WITH BARBARA LUNA, AND IN THAT
- 17 MEETING SHE EXPLAINED TO ME ALL THE REASONS WHY CWS WOULD
- 18 NOT PREVAIL IN THIS AND THE TEAMSTERS WOULD.
- 19 Q. WHEN DID YOU HAVE THIS MEETING? ARE YOU SURE ABOUT
- 20 THIS?
- 21 A. I'M ABSOLUTELY CERTAIN. I MET WITH BARBARA LUNA IN
- 22 HER OFFICE.
- 23 Q. WHEN DID YOU MEET?
- 24 A. I COULDN'T TELL YOU. SOMETIME AFTER THE COMPLAINT
- 25 WAS FILED, AND I WOULD THINK SOMETIME BEFORE THE LETTER WAS
- 26 SUBMITTED TO THE NLRB.
- 27 Q. WAS SHE TRYING TO ACHIEVE SOME KIND OF SETTLEMENT
- 28 OF THE COMPLAINT WHEN YOU HAD THIS DISCUSSION WITH HER?

SUE HERFURTH, CSR #9645

1358

- 1 A. I DON'T RECALL WHO ASKED FOR THE MEETING I DON'T
- 2 RECALL IF SHE WAS TRYING TO GET A SETTLEMENT OR I WAS TRYING
- 3 TO GET AN UNDERSTANDING OF WHAT WAS GOING ON.

4 Q. WHO ELSE WAS AT THE MEETING WERE THE TEAMSTERS
5 REPRESENTED?

6 A. IF I REMEMBER CORRECTLY, IT WAS JUST ME AND BARBARA
7 LUNA.

8 Q. WHY WERE YOU MEETING WITH BARBARA LUNA?

9 A. I THINK I WAS TRYING TO GET AN UNDERSTANDING OF
10 WHAT THE ISSUES WERE SO I COULD EXPLAIN IT TO DAVID.

11 Q. ARE YOU SURE, IS IT POSSIBLE SHE WAS SIMPLY
12 EXPLAINING TO YOU WHAT THE TEAMSTERS' ARGUMENT WAS AS
13 OPPOSED TO WHAT HER BELIEF WAS ON THE ISSUE?

14 A. SHE CERTAINLY EXPLAINED TO ME WHAT THE TEAMSTERS'
15 ARGUMENT WAS, BUT SHE ALSO EXPLAINED TO ME USING AN EXAMPLE
16 OF A GROCERY STORE THAT EXPANDS FROM ONE MARKET TO ANOTHER,
17 A GROCERY CHAIN OPENS A STORE IN ANOTHER MARKET, HOW THEIR
18 UNION AGREEMENT DOESN'T AUTOMATICALLY EXTEND TO THE NEW
19 STORE.

20 Q. WHEN SAFEWAY TAKES OVER ALBERTSON'S, THEY HAVE TO
21 HAVE A NEW ELECTION TO SEE WHAT UNION REPRESENTS THE NEW
22 STORE?

23 A. I DON'T RECALL THAT BEING THE EXAMPLE. I BELIEVE
24 THE EXAMPLE WAS SAFEWAY GOES INTO A NEW TOWN WHERE THEY
25 DON'T HAVE A SAFEWAY AND BUILD A NEW SAFEWAY, OPEN IT UP;
26 THE UNION THEY HAVE IN THE NEIGHBORING TOWN DOESN'T
27 AUTOMATICALLY REPRESENT WORKERS IN THAT NEW SAFEWAY.

28 Q. IF SAFEWAY EXPANDS FROM MOUNTAIN VIEW TO SUNNYVALE,

SUE HERFURTH, CSR #9645

1359

1 THEY HAVE TO HOLD A NEW ELECTION TO SEE WHO REPRESENTS THE

2 WORKERS IN SUNNYVALE?

3 A. I SUPPOSE THERE ARE OTHER OPTIONS, LIKE STIPULATION
4 TO CARD CHECK OR --

5 Q. I'M SORRY. WHAT WAS THE ANSWER?

6 A. I BELIEVE I SAID THERE WERE PROBABLY OTHER OPTIONS
7 BESIDES HAVING AN ELECTION. FOR EXAMPLE, STIPULATING TO
8 CARD CHECK, WHICH CWS HAS DONE.

9 Q. ARE YOU SURE BARBARA LUNA TOLD YOU THAT THE
10 EXISTING EXPANSION AGREEMENT WITH ILWU WOULD PROBABLY NOT
11 HOLD UP IF THE NLRB PROCEEDED TO SOME KIND OF HEARING? DID
12 SHE TELL YOU THAT?

13 A. THAT'S MY RECOLLECTION, YES.

14 Q. AND COULD YOU EXPLAIN TO US -- DO YOU HAVE ANY
15 REASON TO BELIEVE THAT SHE SHARED THAT WITH YOU AND SHE
16 WOULDN'T HAVE SHARED THAT WITH THE TEAMSTERS?

17 A. I DON'T KNOW THAT SHE DIDN'T.

18 Q. WHY DID THEY WITHDRAW THEIR COMPLAINT?

19 A. YOU WANT ME TO SPECULATE?

20 Q. DO YOU KNOW?

21 A. THE TEAMSTERS DON'T TELL ME WHY THEY DO THINGS.

22 Q. I'M TRYING TO POINT OUT THINGS THAT SEEM TO BE
23 INCONSISTENT WITH WHAT YOU'RE TELLING US TO SEE IF MAYBE
24 THAT JIVES WITH YOUR RECOLLECTION MORE.

25 I MEAN, YOU TOLD US THE NLRB ISSUED A FINDING, AND
26 NOW I SHOWED YOU THAT THE COMPLAINT WAS WITHDRAWN. NOW
27 YOU'RE GOING TO A NEW VERSION OF EVENTS, WHICH IS YOU HAD A
28 MEETING WITH BARBARA LUNA; SHE TOLD YOU ORALLY AT A PRIVATE

SUE HERFURTH, CSR #9645

1 MEETING THAT SHE BELIEVED THE NLRB WAS GOING TO RULE AGAINST
2 CWS. IS THAT WHAT YOU'RE TELLING US?

3 A. I DON'T THINK I FAILED TO OMIT THE MEETING WITH
4 BARBARA LUNA; I SIMPLY WAS EXPLAINING I HAD HAD THE
5 CONVERSATION WITH HER AND SHE TOLD ME THAT THIS WAS THE
6 CASE, AND I ASSUMED THAT THE FINDING HAD BEEN ISSUED. I MAY
7 HAVE BEEN AWARE OF THAT; I MAY NOT HAVE BEEN AWARE AT THE
8 TIME.

9 Q. WHAT WAS BARBARA'S ROLE WITH NLRB?

10 A. I BELIEVE SHE WAS THE CASE OFFICER, REGION OFFICER
11 OR SOMETHING. I DON'T KNOW EXACTLY WHAT HER TITLE WAS.

12 Q. WHAT DID YOU DO AFTER MEETING WITH BARBARA LUNA
13 REGARDING THE ISSUE OF TEAMSTERS AND CWS?

14 A. I DON'T RECALL THE DAY ON WHICH I MET WITH BARBARA
15 LUNA, AND IT WAS A LONG TIME AGO SO I COULDN'T GIVE YOU A
16 SEQUENCE OF EVENTS. I KNOW I TALKED TO DAVID DUONG ABOUT MY
17 MEETING WITH BARBARA LUNA. BEYOND THAT, I DON'T KNOW WHAT I
18 DID.

19 Q. SO I WAS TRYING TO FIND OUT HOW CWS EXTRICATED
20 ITSELF FROM ITS EXPANSION AGREEMENT WITH THE ILWU. CAN YOU
21 HELP US OUT ON THAT?

22 A. I DON'T RECALL ANYTHING THAT CWS ACTUALLY DID TO
23 EXTRICATE ITSELF FROM THAT AGREEMENT.

24 Q. SO ILWU JUST KIND OF RODE OFF INTO THE SUNSET, JUST
25 IGNORED THE EXPANSION AGREEMENT THAT THEY HAD WITH CWS AND
26 DID NOT PROTEST THIS IN ANY WAY?

27 A. WELL, I AM NOT AWARE OF ANY PROTEST, BUT I DON'T
28 KNOW ABOUT RIDING OFF INTO THE SUNSET OR ANY OF THE OTHER

1 CHARACTERIZATIONS. I DON'T KNOW WHAT THEY DID OR WHAT THEY
2 WERE THINKING.

3 Q. MR. ROTTENBERG, WE SHOWED YOU THE OCTOBER 1998
4 LETTER AGREEING -- THE EXPANSION AGREEMENT, ESSENTIALLY,
5 RIGHT?

6 A. YES.

7 Q. WE KNOW MR. FLOTTE ADDRESSED THE CITY COUNCIL AND
8 MADE SOME REMARKS ABOUT ILWU REPRESENTING, NEEDS TO
9 REPRESENT THE WORKERS OR SOMETHING ALONG THOSE LINES?

10 A. YES. WAS THAT ON THE 10TH?

11 Q. YES.

12 A. OKAY.

13 Q. AND SOMEHOW THE TEAMSTERS ARE PUT IN PLACE OF THE
14 ILWU, AND YOU HAVE NO HISTORY TO RECOUNT ABOUT ANY
15 INTERACTION WITH THE ILWU OVER THE LOSS OF MEMBERS WORKING
16 FOR CWS IN SAN JOSE. IS THAT CORRECT?

17 A. THAT IS CORRECT.

18 Q. AND CAN YOU EXPLAIN HOW THAT'S POSSIBLE?

19 A. WELL, DAVID DOESN'T TELL ME EVERYTHING, SO IT'S
20 ENTIRELY POSSIBLE THAT HE DIDN'T TELL ME AND I DIDN'T ASK.
21 THERE WAS AN AWFUL LOT GOING ON. HE MAY HAVE TOLD ME AND I
22 MAY HAVE FORGOTTEN; I MAY HAVE INFERRED SOME THINGS, AND
23 THAT MAY HAVE BEEN SUFFICIENT FOR ME OR I MAY NEVER HAVE
24 EVEN BEEN CURIOUS ABOUT IT.

25 Q. THAT WAS GOING TO BE MY NEXT QUESTION. YOU HAD NO
26 CURIOSITY ABOUT, HAVING WRITTEN THE EXPANSION AGREEMENT OF
27 OCTOBER 1998 WITH THE ILWU, YOU HAD NO CURIOSITY ABOUT HOW
28 CWS WAS ABLE TO EXTRICATE ITSELF FROM THAT AGREEMENT?

1 A. UH -- THAT'S CORRECT.

2 Q. AND YOUR TESTIMONY IS YOU HAVE NO INFORMATION ABOUT
3 WHAT HAPPENED, WHAT EFFORTS THE ILWU MADE OR DIDN'T MAKE TO
4 ENFORCE THE EXPANSION AGREEMENT?

5 A. WELL, I GUESS IF I WAS GOING TO SPECULATE --

6 Q. I DON'T WANT YOU TO SPECULATE; I THINK WE'VE HEARD
7 ENOUGH OF THAT. I WANT TO KNOW IF YOU REMEMBER.

8 A. I'M TELLING YOU MY REASONING.

9 Q. GO AHEAD.

10 A. MY REASONING WAS AT THE TIME IT, OR WOULD HAVE BEEN
11 AT THE TIME, THAT WITH THE TEAMSTER WAGES BEING PAID WE
12 WOULD BE FAIRLY WELL CERTAIN THAT THE TEAMSTERS WOULD ALL BE
13 COMING OVER FROM WASTE MANAGEMENT. WE WOULD BE HIRING THE
14 DISPLACED WORKERS, THERE WOULDN'T BE AN EXODUS FROM THE
15 INDUSTRY OF THESE TRAINED SORTERS, THEY WOULD COME TO WORK
16 FOR US. AND THEY WOULD SIGN TEAMSTER CARDS, PRESUMABLY,
17 WHEN THEY GOT TO WORK, BECAUSE THEIR UNDERSTANDING WAS THEY
18 WERE LOYAL TEAMSTERS, NO REASON WHY THEY WOULD COME IN ON
19 THE FIRST DAY AND SIGN LONGSHOREMEN CARDS. THEY HAD BEEN
20 TEAMSTERS FOR YEARS, THEY WERE GOING TO GET TEAMSTER WAGES
21 AND BENEFITS, AND SO IT STANDS TO REASON THEY WOULD CONTINUE
22 TO BE TEAMSTERS. I GUESS I ASSUMED THE LONGSHOREMEN
23 UNDERSTOOD THAT AS WELL.

24 Q. WHY WOULD THERE BE ANY CARDS FILLED OUT TO
25 DETERMINE UNION REPRESENTATION IF THE EXPANSION AGREEMENT
26 WAS ENFORCED?

27 A. I DON'T HAVE AN ANSWER FOR YOU.

28 Q. IN OTHER WORDS, THE WAY THE EXPANSION AGREEMENT

SUE HERFURTH, CSR #9645

1363

1 WOULD OPERATE, THERE WOULD BE NO CARD CHECK, NO NEUTRALITY
2 AGREEMENT; THEY WOULD JUST OPEN UP A NEW FACILITY IN
3 SAN JOSE AND HIRE WORKERS, AND THOSE WORKERS WOULD BE
4 INCLUDED IN THE EXISTING CBA. ISN'T THAT HOW THE AGREEMENT
5 WOULD WORK?

6 A. I DON'T THINK THAT I EVER GOT THAT INTIMATE WITH
7 THE DETAILS OR MECHANICS OF HOW THAT KIND OF PROCESS WOULD
8 WORK, AND I DON'T THINK I HAD EVER BEEN INVOLVED IN IT, AND
9 LABOR AGREEMENTS IS NOT REALLY MY SPECIALTY TO THE EXTENT
10 THAT I HAVE ONE.

11 Q. LET'S GO BACK AND LOOK AT EXHIBIT 78.

12 IT SAYS:

13 ALL PROVISIONS OF THE EXISTING AGREEMENT
14 SHALL APPLY TO THE NEW FACILITY OR FACILITIES.

15 CORRECT?

16 A. YES.

17 Q. SO THAT, IF THAT'S THE CASE, THERE WOULD BE NO CARD
18 CHECK, NO ELECTION, NO VOTE OR DECISION TO BE MADE. JUST
19 LIKE HIRING A NEW EMPLOYEE IN OAKLAND. WHEN YOU HIRE A NEW
20 EMPLOYEE IN OAKLAND, YOU DON'T GO THROUGH A CARD CHECK, YOU
21 DON'T DECIDE WHICH UNION; THAT PERSON IS COVERED BY THE
22 EXISTING UNION, RIGHT?

23 A. I DON'T KNOW ENOUGH ABOUT LABOR LAW TO KNOW IF
24 THAT'S EVEN A VALID CONTRACT. I DON'T KNOW IF UNIONS AND
25 EMPLOYERS CAN EVEN MAKE CONTRACTS LIKE THAT. I KNOW THE

26 TEAMSTERS SAID THEY COULDN' T, AND THE NLRB TOLD ME THAT WE
27 COULDN' T, OR WE COULD BUT IT WOULDN' T STAND UP. I DON' T
28 KNOW IF THE ILWU EVER DECIDED IT WAS GOING TO HANG ITS HAT

SUE HERFURTH, CSR #9645

1364

1 ON THAT AGREEMENT.

2 Q. IN 1998, WHEN YOU DRAFTED UP THIS AGREEMENT FOR
3 DAVID' S SIGNATURE, DID YOU TELL HIM, GEE, I DON' T KNOW
4 ANYTHING ABOUT LABOR LAW, MAYBE YOU OUGHT TO CONSULT WITH A
5 LAWYER?

6 A. I DON' T KNOW IF I SAID IT EXACTLY THAT WAY, BUT HE
7 KNOWS I' M NOT AN ATTORNEY.

8 Q. DID YOU SUGGEST TO HIM IN ANY WAY THAT YOU WERE
9 IGNORANT ABOUT LABOR LAW; THEREFORE, I' M NOT THE PERSON TO
10 DRAFT AN AGREEMENT FOR YOU, YOU' D BETTER SEE A LAWYER?

11 A. I DON' T KNOW THAT I SAID THAT EXPLICITLY WHEN WE
12 WERE TALKING ABOUT THAT LETTER, BUT DAVID IS A VERY BRIGHT
13 MAN, ALWAYS KNOWS WHAT HIS OPTIONS ARE, USUALLY IS NOT SHY
14 ABOUT CONSULTING COUNSEL.

15 Q. APPARENTLY, YOU FELT COMFORTABLE WRITING THE
16 AGREEMENT, WHICH NOW YOU' RE TELLING US YOU' RE NOT EVEN SURE
17 IS VALID; IS THAT CORRECT?

18 A. THAT' S CORRECT.

19 Q. NOW, DID YOU, ARE YOU THE PERSON WHO ASKED ROBERTO
20 FLOTTE TO COME TO THE COUNCIL MEETING ON OCTOBER 10?

21 A. NO.

22 Q. DID YOU KNOW IN ADVANCE THAT HE WAS GOING TO BE
23 SHOWING UP AT THE COUNCIL MEETING ON OCTOBER 10?

24 A. I BELIEVE I DID.
25 Q. HOW DID YOU KNOW THAT?
26 A. I THINK DAVID TOLD ME.
27 Q. AND SO DID DAVID INDICATE THAT HE HAD ASKED ROBERTO
28 FLOTTE TO COME TO THE OCTOBER 10 COUNCIL MEETING?

SUE HERFURTH, CSR #9645

1365

1 A. I BELIEVE SO, YES.
2 Q. DID YOU TELL DAVID, LOOK, WHY ARE WE HAVING THE
3 ILWU ADDRESS THE COUNCIL THE DAY BEFORE WE KIND OF COMMITTED
4 TO GO WITH THE TEAMSTERS? WHAT SENSE DID THAT MAKE TO YOU?
5 A. I DON'T RECALL.
6 Q. NOW, EARLIER IN YOUR TESTIMONY WHEN I WAS ASKING
7 YOU ABOUT MR. FLOTTE AND HIS APPEARANCE AT THE COUNCIL, YOU
8 MADE A REFERENCE TO RECOGNIZING SOME OPPORTUNITY. DO YOU
9 RECALL THAT?
10 A. COULD YOU BE A LITTLE BIT MORE SPECIFIC.
11 Q. YEAH. I HAD BEEN TALKING TO YOU ABOUT
12 MR. FLOTTE -- WELL, YOU HAD VOLUNTEERED THAT YOU AREN'T SURE
13 THAT THE ILWU WAS AWARE OF THE OPPORTUNITY IN SAN JOSE. DO
14 YOU RECALL THAT?
15 A. YES.
16 Q. THEN I POINTED OUT TO YOU THAT MR. FLOTTE APPEARED
17 AT THE COUNCIL MEETING IN SAN JOSE, SO HE MUST HAVE BEEN
18 AWARE OF THE OPPORTUNITY, CORRECT?
19 A. YES.
20 Q. AND YOU NOW TELL US THAT DAVID ASKED MR. FLOTTE TO
21 ADDRESS THE COUNCIL ON OCTOBER 10, RIGHT?

22 A. THAT'S CORRECT. I THINK I SAID I BELIEVE DAVID
23 TOLD ME THAT.

24 Q. DID YOU BELIEVE, WHEN YOU GOT UP ON THE MORNING OF
25 OCTOBER 10, 2000, DID YOU ASSUME THAT CWS WAS GOING TO GO
26 WITH THE TEAMSTERS INSTEAD OF LONGSHOREMEN?

27 A. I DON'T REMEMBER WHAT I WAS THINKING OR FEELING ON
28 THAT MORNING.

SUE HERFURTH, CSR #9645

1366

1 Q. WELL, AT THE END OF THE DAY ON OCTOBER 9, DID YOU
2 BELIEVE THAT CWS WAS GOING TO GO WITH TEAMSTERS? IT'S AFTER
3 THE ADDENDUM WAS SIGNED, DIRECTED BY YOU, RIGHT?

4 A. SIR, I DON'T REMEMBER WHAT I WAS THINKING OR
5 BELIEVING FIVE-AND-A-HALF, SIX-AND-A-HALF YEARS AGO. THINGS
6 WERE MOVING VERY QUICKLY; IT WAS A POLITICAL ENVIRONMENT IN
7 A TOWN I'M NOT FAMILIAR WITH. I DON'T DEAL WITH THE UNIONS
8 EVERY DAY, IT WAS SHIFTING SANDS, AND I WAS JUST TRYING TO
9 GRASP ALL THE DETAILS THAT I KNEW OF AND HOW THEY RELATED TO
10 ONE ANOTHER. IT'S A STRANGE SET OF CIRCUMSTANCES.

11 Q. WAS, TO YOUR KNOWLEDGE, WAS THERE ANY EFFORT MADE
12 TO CALL OFF MR. FLOTTE'S APPEARANCE BEFORE THE CITY COUNCIL?

13 A. NOT THAT I KNOW OF OR RECALL.

14 Q. SO DO YOU RECALL THAT, UNDER THE AGREEMENT THAT
15 NORCAL HAD WITH THE CITY AND THE SUBCONTRACT WITH NORCAL AND
16 CWS, OPERATIONS WERE SUPPOSED TO COMMENCE JULY 1, '02?

17 A. YES.

18 Q. AND WHEN OPERATIONS COMMENCED JULY 1, '02, DID CWS
19 HAVE AN OPERATING, FULLY FUNCTIONING FACILITY UP AND

- 20 RUNNING?
21 A. NOT IN SAN JOSE.
22 Q. IN SAN JOSE, DID THEY HAVE A FULLY FUNCTIONING
23 FACILITY?
24 A. NO.
25 Q. AS A MATTER OF FACT, THEY DIDN'T BECOME OPERATIONAL
26 UNTIL SOMETIME IN NOVEMBER, WAS IT?
27 A. THAT'S CORRECT.
28 Q. SO IN THOSE INTERVENING MONTHS, JULY, AUGUST,

SUE HERFURTH, CSR #9645

1367

- 1 SEPTEMBER, OCTOBER, PART OF NOVEMBER, DID GARBAGE PILE UP ON
2 THE STREETS OF SAN JOSE?
3 A. NO.
4 Q. WHAT HAPPENED TO NORCAL'S -- WHAT HAPPENED TO THE
5 RECYCLABLES FROM SAN JOSE THAT WERE PICKED UP BY THE NORCAL
6 DRIVERS? WHERE DID THEY GO?
7 A. THEY WERE DELIVERED TO A TRANSFER STATION IN THE
8 NORTHERN PART OF THE CITY AND TRANSFERRED IN HAUL TRAILERS
9 AND HAULED TO OAKLAND.
10 Q. TRANSFERRED INTO WHAT?
11 A. TRANSFER TRAILERS, 18-WHEELER TRUCKS AND TRAILERS.
12 Q. DELIVERED TO WHERE?
13 A. DELIVERED TO CWS'S FACILITIES IN OAKLAND.
14 Q. WERE THEY PROCESSED THERE?
15 A. YES, THEY WERE.
16 Q. AND DID NORCAL PAY CWS FOR THE EXTRA COST OF USING
17 TEAMSTERS, PAYING HIGH WAGE BENEFITS RIGHT AWAY STARTING

18 JULY 1, '02, OR WAS THERE A DELAY BEFORE NORCAL STARTED
19 PAYING CWS?

20 A. CAN I CLARIFY YOUR QUESTION?

21 Q. SURE.

22 A. THERE WAS A DELAY IN THEM PAYING CWS, BUT WHEN THEY
23 PAID CWS, THEY DID PAY IN ARREARS. THEY DID PAY ALL THE
24 AMOUNT.

25 Q. I UNDERSTAND, BUT MY QUESTION IS A TIMING QUESTION.
26 DID NORCAL BEGIN PAYING CWS FOR THE EXTRA LABOR COSTS FROM
27 DAY ONE, OR WAS THERE A DELAY IN STARTING THOSE PAYMENTS?

28 A. THERE WAS A DELAY IN PAYING CWS THE MONEY OWED.

SUE HERFURTH, CSR #9645

1368

1 Q. DO YOU RECALL HOW LONG OF A DELAY?

2 A. I BELIEVE THAT IT WAS IN LATE 2003 PERHAPS, OR
3 EARLY 2004 WHEN WE FINALLY RECEIVED OUR FIRST PAYMENTS FROM
4 NORCAL.

5 Q. OKAY. WERE YOU INVOLVED IN ANY EFFORTS BY CWS TO
6 PROCURE PAYMENTS FROM NORCAL FOR THESE EXTRA LABOR COSTS?

7 A. YES, I WAS.

8 Q. WHAT EFFORTS WERE YOU INVOLVED IN?

9 A. THERE WERE SOME MEETINGS THAT I WENT TO, AT LEAST A
10 COUPLE AT CITY HALL.

11 Q. OKAY. WHO DID YOU MEET WITH?

12 A. WELL, LET'S SEE. THERE WAS ONE DAY, I BELIEVE,
13 WHEN WE MET WITH TWO OR THREE COUNCILMEMBERS, AND THERE WAS
14 A COUPLE OF OTHER, THERE WAS ANOTHER MEETING WHERE NORCAL
15 HAD A NUMBER OF REPRESENTATIVES PRESENT. CWS HAD

16 REPRESENTATIVES, AND THE MAYOR'S OFFICE OF BUDGET AND
17 FINANCE, AND BUDGET AND POLICY HAD A COUPLE MEMBERS PRESENT.
18 AND THERE WERE SOME MEETINGS AFTER THAT WHERE CWS AND NORCAL
19 AND REPRESENTATIVES FROM THE MAYOR'S OFFICE OF BUDGET AND
20 POLICY --

21 Q. LET'S BREAK IT DOWN. WHAT WAS THE FIRST EFFORT YOU
22 WERE INVOLVED IN?

23 A. I DON'T RECALL THE TIMING, BUT I BELIEVE IT WAS
24 PROBABLY THE MEETINGS WITH COUNCILMEMBERS.

25 Q. WHICH COUNCILMEMBERS?

26 A. I ONLY REMEMBER MEETING WITH COUNCILMEMBER CHAVEZ.
27 I BELIEVE ONE OF THE MEMBERS WAS COUNCILMEMBER REED, AND I
28 DO NOT RECALL WHO THE THIRD ONE WAS.

SUE HERFURTH, CSR #9645

1369

1 Q. OKAY. THE MEETING THAT YOU HAVE IN MIND, WAS THAT
2 A MEETING WITH, JOINT MEETING WITH COUNCILMEMBER CHAVEZ AND
3 REED TOGETHER, OR WERE THEY SEPARATE MEETINGS?

4 A. SEPARATE MEETINGS.

5 Q. WHAT DID YOU TELL COUNCILMEMBER CHAVEZ?

6 A. I DON'T RECALL SPEAKING SO MUCH AS ONE WORD IN THE
7 MEETING.

8 Q. WHO ELSE WAS AT THE MEETING?

9 A. DAVID DUONG, CERTAINLY, AND I DON'T REMEMBER WHO
10 ELSE. MAYBE CWS HAD IN ITS, UNDER CONTRACT A COUPLE OF
11 LOBBYISTS AT THE TIME.

12 Q. DO YOU REMEMBER THEIR NAMES?

13 A. TONY ARREOLA AND SEAN KALI-RAI, AND I DON'T

14 REMEMBER IF BOTH OF THEM WERE PRESENT FOR BOTH MEETINGS OR
15 ONLY ONE.

16 Q. WHAT DO YOU REMEMBER COUNCILMEMBER CHAVEZ BEING
17 TOLD?

18 A. I DON'T RECALL IF THOSE MEETINGS OCCURRED BEFORE
19 THE COUNCIL VOTE OR --

20 Q. WHICH VOTE?

21 A. THE COUNCIL VOTE TO AWARD THE CONTRACT. AFTER THE
22 COUNCIL VOTE, AFTER THE CONTRACT BEGAN, I UNDERSTAND YOUR
23 FRUSTRATION, SIR --

24 Q. I DON'T THINK YOU UNDERSTAND THE QUESTION, OR AT
25 LEAST YOU HAVE FORGOTTEN IT OR DON'T HAVE IT IN YOUR MIND.
26 MY QUESTION, SIR, IS AFTER JULY 1, '02, WHICH WOULD BE
27 ALMOST TWO YEARS AFTER THE COUNCIL FIRST TOOK UP THE ISSUE
28 OF AWARDING THE PROPOSAL, CORRECT?

SUE HERFURTH, CSR #9645

1370

1 A. YES.

2 Q. AND SOMETIME AFTER THAT A PROBLEM AROSE BECAUSE
3 NORCAL DID NOT IMMEDIATELY BEGIN PAYING CWS FOR THE EXTRA
4 LABOR COST, CORRECT?

5 A. CORRECT.

6 Q. DO YOU HAVE THAT IN YOUR MIND?

7 A. YES.

8 Q. SO I'M NOT ASKING YOU ABOUT MEETINGS YOU HAD
9 GENERALLY WITH COUNCILMEMBERS ABOUT A WHOLE PANOPLY OF
10 ISSUES RELATED TO THE CWS AND NORCAL PROPOSAL. I WANT YOU
11 TO CONCENTRATE ON MEETINGS AND EFFORTS UNDERTAKEN BY CWS TO

12 GET NORCAL TO PAY FOR THE EXTRA LABOR COSTS. OKAY?

13 A. YES.

14 Q. OKAY. NOW, I ASSUME THIS WAS NOT AN ISSUE PRIOR TO
15 JULY 1, '02, BECAUSE THE COSTS WEREN'T INCURRED BEFORE THEN,
16 RIGHT?

17 A. WELL, THE COSTS WEREN'T INCURRED, BUT I THINK THE
18 PROBLEM MAY HAVE STILL EXISTED AS TO NORCAL AS TO HOW
19 EXACTLY TO GET THE MONEY. SO I GUESS, YOU KNOW, I'M HAVING
20 SOME DOUBTS IN MY OWN MIND ABOUT WHEN EXACTLY DID THE
21 MEETINGS OCCUR. DID THEY OCCUR BEFORE THE CONTRACT STARTED
22 OR AFTER, BECAUSE, YOU KNOW, THAT ADDENDUM WAS WRITTEN IN
23 2000.

24 Q. WAS THE ADDENDUM ON OCTOBER 9, 2000 -- YOU WROTE
25 IT, RIGHT?

26 A. I PARTICIPATED IN ITS WRITING.

27 Q. YOU WROTE THE MAJORITY OF IT SUBJECT TO
28 MODIFICATIONS BY OTHER PEOPLE, CORRECT?

SUE HERFURTH, CSR #9645

1371

1 A. INCLUDING CWS COUNSEL, YES.

2 Q. BUT YOU WROTE THE MAJORITY OF IT, RIGHT?

3 A. YES.

4 Q. IS THERE ANY CONTINGENCY OR REQUIREMENT IN THIS
5 ADDENDUM THAT NORCAL BE PAID BY THE CITY BEFORE IT PAYS CWS?

6 A. ABSOLUTELY NOT.

7 Q. SO UNTIL NORCAL WAS REQUIRED TO BEGIN PAYING CWS
8 AND FAILED TO DO SO, WOULD THERE BE ANY REASON FOR CWS OR
9 YOURSELF TO SUSPECT THAT YOU NEED TO LOBBY THE CITY TO GET

10 NORCAL PAID; OTHERWISE, YOU'RE NOT GOING TO GET PAID?
11 A. IF NORCAL HAD ASKED FOR OUR HELP, YES.
12 Q. DID NORCAL ASK FOR YOUR HELP BEFORE JULY 1, '02?
13 A. I DON'T RECALL WHEN I HEARD THAT THEY HAD ASKED FOR
14 US TO COME TO MEETINGS.
15 Q. DO YOU HAVE ANY WAY TO FIX THE DATE OF YOUR -- AT
16 LEAST THE COUNCIL MEETINGS YOU TOLD US ABOUT?
17 A. I DON'T HAVE -- I DON'T HAVE RECORDS THAT WOULD
18 ALLOW ME TO FIX THE DATE, BUT LOOKING AT OTHER PEOPLE'S
19 RECORDS MIGHT ALLOW ME TO FIX THE DATE.
20 Q. ALL RIGHT. SO AT A DATE UNKNOWN, YOU WERE PRESENT
21 AT A MEETING WITH COUNCILMEMBER CHAVEZ AND OTHER PEOPLE,
22 RIGHT?
23 A. WELL, I WAS PRESENT -- YES, COUNCIL COUNCILMEMBER
24 CHAVEZ'S OFFICE.
25 Q. AND SHE WAS THERE?
26 A. YES.
27 Q. AND THIS MEETING HAD TO DO WITH GETTING THE CITY TO
28 PAY NORCAL ADDITIONAL MONEY; IS THAT CORRECT?

SUE HERFURTH, CSR #9645

1372

1 A. I BELIEVE SO, YES.
2 Q. AND DO YOU THINK THERE IS ANY POSSIBILITY THE
3 MEETING OCCURRED BEFORE NORCAL WAS AWARDED THE CONTRACT IN
4 2000?
5 A. NO.
6 Q. OKAY. SO IT WAS AFTER THE AWARD OF THE CONTRACT TO
7 NORCAL?

8 A. CORRECT.

9 Q. AND WHAT DID YOU HEAR THE PEOPLE AT THE MEETING
10 TELL COUNCILMEMBER CHAVEZ ABOUT THIS MATTER?

11 A. I WOULD LIKE TO BACK UP FOR A SECOND. WE HAD
12 MEETINGS WITH COUNCILMEMBERS, AND DAVID DUONG WAS THERE, AND
13 I WAS THERE, AND ONE OR BOTH OF SEAN KALI -RAI OR TONY
14 ARREOLA WERE THERE. AND AS I RECALL THESE EVENTS NOW AND
15 THE SUBJECT OF THE MEETING IT MAY HAVE BEEN THAT THE FOCUS,
16 THE REASON FOR THE MEETING AS REQUESTED BY US WAS RELATIVE
17 TO THE CITY'S ENVIRONMENTAL ENFORCEMENT ACTIONS AGAINST CWS,
18 NOT NECESSARILY ABOUT THE ADDENDUM MONIES.

19 AND AS I THINK ABOUT IT NOW BECAUSE THERE WERE
20 OTHER ISSUES I'M NOT EVEN CERTAIN ABOUT WHAT WAS DISCUSSED
21 IN THESE MEETINGS, WHETHER THIS IS THE ADDENDUM MONIES OR
22 ENVIRONMENTAL ENFORCEMENT ACTIONS, OR IF EVEN THOSE ISSUES
23 WERE ACTUALLY DISCUSSED OR WE JUST MET WITH THEM TO TELL
24 THEM WHAT WE WERE DOING, WHAT A GREAT JOB WE WERE DOING FOR
25 THE CITY.

26 Q. SO YOU'RE CONFUSED?

27 A. IT'S BEEN A LONG TIME --

28 Q. IS THAT CORRECT, YOU'RE CONFUSED?

SUE HERFURTH, CSR #9645

1373

1 A. IT IS CORRECT I'M UNCERTAIN.

2 Q. BECAUSE CWS HAD OTHER ISSUES WITH THE CITY ASIDE
3 FROM GETTING REIMBURSEMENT FROM NORCAL?

4 A. CORRECT.

5 Q. VERY BIG ISSUES OF GETTING PERMITTING AND

- 6 PERMISSIONS TO OPEN UP A FACILITY, RIGHT?
- 7 A. YES.
- 8 Q. ANOTHER ISSUE WAS THE RECYCLABLES DELIVERED BY
- 9 NORCAL HAD EXCESSIVE GARBAGE CONTAMINATING THE RECYCLABLES?
- 10 A. THAT'S CORRECT.
- 11 Q. CWS WAS GETTING CITED; THE CITY WAS SEEKING LARGE
- 12 FINES FOR THAT PROBLEM, CORRECT?
- 13 A. CORRECT.
- 14 Q. BECAUSE OF THE CONDITIONAL USE PERMIT, CWS HAD
- 15 LIMITED THE GARBAGE CONTENT TO 10 PERCENT, RIGHT?
- 16 A. IN EFFECT, YES.
- 17 Q. IN OTHER WORDS, TOO MUCH GARBAGE, IT WASN'T A
- 18 GARBAGE FACILITY, IT WAS A RECYCLING FACILITY. AND IF YOU
- 19 HAD EXCESS CONTAMINANTS, YOU WOULD NOT MEET THE LEGAL
- 20 DEFINITION, RIGHT?
- 21 A. THAT'S CORRECT.
- 22 Q. SO LET'S PUT ASIDE THE PERMITTING. AS A MATTER OF
- 23 FACT, CWS WAS ORIGINALLY GOING TO HAVE A FACILITY ON BURKE
- 24 STREET, RIGHT?
- 25 A. THAT WAS OUR PLAN. WE SUBMITTED FOR A SPECIAL USE
- 26 PERMIT, BUT IT HAD BEEN DENIED.
- 27 Q. YOU WENT TO PLAN B, WHICH WAS TIMOTHY DRIVE?
- 28 A. ACTUALLY, I THINK TIMOTHY DRIVE WAS PLAN C, BECAUSE

SUE HERFURTH, CSR #9645

1374

- 1 WE LOOKED AT ANOTHER FACILITY IN THE SAME COUNCIL DISTRICT
- 2 AND GOT WORD BACK THAT WAS NOT GOING TO FLY EITHER.
- 3 Q. EVENTUALLY YOU LANDED ON TIMOTHY DRIVE?

4 A. CORRECT.

5 Q. PUT ASIDE THE PERMITTING ISSUES, PUT ASIDE THE
6 CITATIONS ABOUT EXCESSIVE GARBAGE AT THE FACILITY, I'M ONLY
7 INTERESTED IN ONE ISSUE FOR THE MOMENT, AND THAT IS CWS.
8 WHAT YOU DID, IF ANYTHING, TO HELP CWS GET THIS EXTRA MONEY
9 FOR NORCAL. DID YOU DO ANYTHING TO HELP CWS GET THIS
10 ADDENDUM MONEY AS YOU REFERRED TO IT?

11 A. I ATTENDED SOME MEETINGS.

12 Q. WITH WHOM?

13 A. THERE WAS ONE MEETING AT CITY HALL ATTENDED BY
14 MYSELF AND DAVID DUONG, AND I BELIEVE TONY ARREOLA AND
15 REPRESENTATIVES FROM NORCAL, INCLUDING ED MCGOVERN, IT WAS A
16 LOBBYIST, I BELIEVE MIKE SANGIACOMO, THE CEO, ARCHIE
17 HUMPHREY, I BELIEVE WAS THERE, THE CHIEF OPERATING OFFICER.
18 I BELIEVE MICHAEL LOMELE, THE CHIEF FINANCIAL OFFICER FROM
19 NORCAL, WAS ALSO THERE. I BELIEVE THAT BILL JONES, THE AREA
20 VICE PRESIDENT FROM NORCAL, WAS ALSO THERE.

21 I DON'T REMEMBER WHICH ATTORNEY REPRESENTED CWS AT
22 THAT MEETING AT THIS VERY MOMENT. JOE GUERRA WAS THERE, AND
23 THERE WAS A WOMAN FROM JOE GUERRA'S OFFICE WHOSE NAME I DO
24 NOT RECALL WHO WAS ALSO THERE.

25 Q. WERE ANY COUNCILMEMBERS PRESENT AT THIS MEETING?

26 A. NO.

27 Q. SO THE ONLY PERSONS PRESENT AT THE MEETING WHO
28 WORKED FOR THE CITY OF SAN JOSE WERE JOE GUERRA, THE MAYOR'S

SUE HERFURTH, CSR #9645

1375

1 BUDGET DIRECTOR, AND A WOMAN WHO WORKED FOR JOE GUERRA?

2 A. CORRECT, WHOSE NAME I BELIEVE IS JULIE, BUT I DON'T
3 RECALL THE LAST NAME.

4 Q. DO YOU HAVE ANY IDEA WHEN THIS MEETING OCCURRED?

5 A. I'M FAIRLY CONFIDENT THAT IT OCCURRED AFTER THE
6 CONTRACT BEGAN.

7 Q. SO AFTER JULY 1, '02?

8 A. YES, AFTER ADDENDUM MONIES BEGAN TO BE OWED. IT
9 MAY HAVE BEEN ENOUGH PAST JULY 2, 2002 THAT CWS WAS GETTING
10 WORRIED ABOUT WHETHER OR NOT IT WAS GOING TO SEE THE MONEY,
11 BECAUSE IT WAS A LARGE AMOUNT OF MONEY.

12 Q. IT WAS BUILDING UP?

13 A. INDEED.

14 MR. FINKELSTEIN: WE HAVE BEEN GOING FOR A WHILE,
15 I THINK THE REPORTER NEEDS A BREAK.

16 THE FOREPERSON: I READ YOU THE FULL ADMONITION
17 THIS MORNING. BASICALLY, YOU'RE NOT TO COMMUNICATE WITH
18 ANYBODY WHAT YOU HAVE HEARD, SAID, OR SEEN IN THIS
19 PROCEEDING.

20 THE WITNESS: YES.

21 THE FOREPERSON: LET'S RECESS FOR FIVE MINUTES.

22 (A BRIEF RECESS WAS TAKEN.)

23 BY MR. FINKELSTEIN:

24 Q. I'LL JUST CAUTION YOU, MR. ROTTENBERG, YOU'RE STILL
25 UNDER OATH, HAVING BEEN PREVIOUSLY SWORN. DO YOU UNDERSTAND
26 THAT?

27 A. YES.

28 Q. SO WHEN WE TOOK OUR RECESS, WE HAD BEEN TALKING

1 ABOUT A MEETING THAT YOU RECALLED AT CITY HALL WITH
2 JOE GUERRA, SOMEONE YOU BELIEVE WORKED FOR JOE GUERRA NAMED
3 JULIE, AND OTHER PEOPLE, MICHAEL SANGIACOMO, ARCHIE
4 HUMPHREY, I THINK YOU SAID MR. LOMELE, DAVID DUONG, AND
5 YOURSELF. ANYONE ELSE?

6 A. ED MCGOVERN, AND I BELIEVE --

7 Q. SEAN KALI -RAI AND TONY ARREOLA?

8 A. NO, I BELIEVE THAT TONY ARREOLA WAS THERE, BUT NOT
9 SEAN KALI -RAI, BECAUSE I BELIEVE HE SAID JOE GUERRA COULDN'T
10 STAND HIM.

11 Q. SO CAN YOU TELL US AS BEST YOU CAN WHAT YOU RECALL
12 BEING DISCUSSED AT THIS MEETING?

13 A. I HONESTLY DON'T REMEMBER THE MEETING HAVING A
14 LOT -- AS WHAT WAS SAID HAVING A LOT OF SUBSTANCE. I THINK
15 THERE WAS SOME POSTURING AND SOME, A LOT OF PRELIMINARY
16 PLEASANTRIES. AND THE ONLY THING OF REAL SUBSTANCE THAT I
17 GOT OUT OF THAT MEETING WAS THAT JOE GUERRA SAID --
18 UH -- ALMOST MATTER OF FACTLY, THAT THEY WOULD BE BRINGING
19 THIS TO THE COUNCIL, AND AS SOON AS THE COUNCIL APPROVED IT,
20 THEN WE WOULD, NORCAL WOULD GET ITS MONEY.

21 WHICH TO US AT THE TIME MEANT THAT WE WERE GOING
22 TO HAVE A REAL BATTLE GETTING MONEY OUT OF NORCAL, BECAUSE
23 NORCAL HAD MADE THAT CLEAR TO US THEY WERE NOT GOING TO PAY
24 US UNTIL THEY GOT PAID BY THE CITY.

25 SO FOR US IT WAS A DIFFICULT MOMENT, BECAUSE WE
26 KNEW WE WERE GOING TO HAVE AN UPHILL BATTLE WITH NORCAL.
27 AND WE REALIZED THAT NORCAL MIGHT BE HAVING AN UPHILL BATTLE
28 TO GET ITS MONEY FROM THE CITY.

1 I BELIEVE IT WAS NORCAL THAT SPOKE UP FIRST AND
2 SAID, HEY, WAIT A MINUTE, YOU KNOW, WE'RE SUPPOSED TO GET
3 THIS MONEY, NOT WE'RE SUPPOSED TO GET THIS ISSUE TO THE
4 COUNCIL, WHERE THE COUNCIL GETS TO DECIDE WHETHER WE GET THE
5 MONEY.

6 Q. WHAT DID MR. GUERRA SAY IN RESPONSE TO THAT, IF
7 ANYTHING?

8 A. SOMETHING TO THE EFFECT THAT, WELL, YOU KNOW, THIS
9 IS HOW IT WORKS. WE CAN'T JUST WRITE YOU A CHECK; WE HAVE
10 TO GO TO THE COUNCIL.

11 Q. OKAY.

12 A. I DON'T THINK, I DON'T RECALL ANYBODY PRESSING IT
13 BEYOND THAT. I AND DAVID WERE IMPRESSED WITH THE FACT THAT
14 AT THAT MOMENT WE REALIZED WE WERE GOING TO HAVE TO WAIT A
15 LITTLE BIT LONGER FOR OUR MONEY AND THAT WE WERE GOING TO
16 HAVE PROBLEMS.

17 Q. OKAY. WHAT IS YOUR BEST RECOLLECTION AS TO WHETHER
18 THIS MEETING OCCURRED?

19 A. SOMEWHERE BETWEEN MARCH AND NOVEMBER OF 2003.

20 Q. OKAY.

21 A. BUT I DON'T ACTUALLY HAVE AN EVENT ON EITHER END OF
22 THOSE TWO DATES THAT I'M USING AS LANDMARKS. I'M JUST
23 SAYING THAT BECAUSE THAT'S MY GENERAL FEELING FOR WHEN IT
24 MIGHT HAVE BEEN.

25 Q. OKAY. WHERE EXACTLY AT CITY HALL DID THE MEETING
26 TAKE PLACE?

27 A. WELL, OBVIOUSLY, IT WAS THE OLD CITY HALL ON NORTH
28 FIRST AND --

1 Q. DID YOU SAY THE OLD CITY HALL ON NORTH FIRST?

2 A. CORRECT. UH -- AND IT WAS UPSTAIRS, I THINK IT WAS
3 ON THE FLOOR ON WHICH JOE GUERRA'S OFFICE IS.

4 Q. WAS IT IN A CONFERENCE ROOM OR SOMEONE'S OFFICE?

5 A. IT WAS IN A CONFERENCE ROOM THAT WAS VERY SMALL
6 RELATIVE TO THE NUMBER OF PEOPLE THAT WERE IN THE MEETING.

7 Q. OKAY.

8 A. I THINK IT WAS ON THE SOUTH SIDE.

9 Q. DO YOU REMEMBER ANYTHING ELSE ABOUT WHAT WAS SAID
10 AT THE MEETING?

11 A. NOT AS I SIT HERE AT THIS MOMENT.

12 Q. WHO INVITED YOU TO THE MEETING?

13 A. DAVID.

14 Q. AND DO YOU KNOW WHO INVITED DAVID TO THE MEETING?

15 A. I DON'T KNOW IF IT WAS THE MAYOR'S OFFICE OR
16 NORCAL.

17 Q. SO YOU DON'T KNOW?

18 A. CORRECT.

19 Q. OKAY. WERE YOU INVOLVED IN ANY OTHER EFFORTS TO
20 SECURE PAYMENT FOR NORCAL FOR THE EXTRA LABOR COSTS?

21 A. I WAS INVOLVED IN AN ONGOING PROCESS IN TRYING TO
22 ACCOUNT FOR HOW MUCH MONEY THEY OWED US AND COMMUNICATE THAT
23 TO NORCAL, AND THERE WERE MEETINGS BETWEEN CWS AND NORCAL, A
24 NUMBER OF MEETING THAT I WAS PRESENT AT WHERE THE SUBJECT OF
25 THE ADDENDUM MONIES CAME UP. REFERRING JUST --

26 Q. ANYTHING.

27 A. WELL, THE MEETINGS WITH NORCAL AND -- AND THERE
28 WERE MORE MEETINGS WITH JOE GUERRA.

SUE HERFURTH, CSR #9645

1379

1 Q. OKAY. IS THAT STILL IN 2003? WHAT WAS THE NEXT
2 MEETING YOU HAD WITH ANYONE EMPLOYED BY THE CITY OF SAN
3 JOSE, INCLUDING ELECTED OFFICIALS, ON THE SUBJECT OF GETTING
4 NORCAL TO PAY CWS OR GETTING THE CITY TO PAY NORCAL?

5 A. I WAS AT TWO MEETINGS THAT WERE HELD FAIRLY CLOSE
6 TOGETHER IN DATES, AT WHICH CWS, NORCAL, AND IN AT LEAST ONE
7 OF THE MEETINGS, REPRESENTATIVES FROM LOCAL 350 WERE PRESENT
8 ALSO. AND THERE WERE A COUPLE OF DIFFERENT CONFIGURATIONS
9 THAT OCCURRED DURING THE COURSE OF THE TWO MEETINGS. BOTH
10 WENT ON FOR THE BETTER PART OF HALF A DAY --

11 Q. HOLD ON A SECOND. MY QUESTION WAS MEETINGS
12 INVOLVING CITY OFFICIALS, AND YOU HAVEN'T NAMED ANY CITY
13 OFFICIALS.

14 A. JOE GUERRA. AND THEY OCCURRED AT CITY HALL. AND
15 THERE WERE TIMES WHEN WE ALL SAT IN THE WAITING AREA AND JOE
16 WOULD TAKE ONE OR MORE PARTIES INTO A ROOM, AND THEY WOULD
17 TALK AND WOULD COME OUT AND WE WOULD GO IN.

18 AT ONE POINT HE HAD THE TEAMSTERS IN ONE ROOM AND
19 REPRESENTATIVES FROM NORCAL IN ANOTHER ROOM AND
20 REPRESENTATIVES FROM CWS IN A THIRD ROOM. HE MOVED BETWEEN
21 THEM.

22 THERE WAS A TIME WHEN HE DIDN'T HAVE A THIRD ROOM,
23 AND REPRESENTATIVES FROM CWS STAYED IN THE WAITING AREA
24 WHILE HE HAD NORCAL AND I THINK THE TEAMSTERS IN ANOTHER

25 ROOM.

26 THERE WERE TIMES DURING THAT TIME I RECALL WHERE I
27 STAYED IN THE WAITING ROOM AND HE MET WITH DAVID DUONG
28 SEPARATELY.

SUE HERFURTH, CSR #9645

1380

1 Q. ARE THESE MEETINGS RELATED TO ANY EFFORTS BY
2 MR. GUERRA OR OTHER CITY OFFICIALS TO MEDIATE A LABOR
3 DISPUTE BETWEEN THE TEAMSTERS AND CWS?

4 A. UH -- I THINK IT WAS, THE PART I WAS PRIVY TO WAS
5 JOE GUERRA TRYING TO GET AN UNDERSTANDING OF HOW MUCH MONEY
6 THE CITY WAS GOING TO HAVE TO PAY NORCAL BASED ON CWS' S
7 NEEDS, NORCAL' S -- I' M SPECULATING BECAUSE I WASN' T PRIVY TO
8 WHAT HE SAID TO NORCAL, BUT HE HAD NORCAL IN ONE ROOM, US IN
9 ANOTHER. WE WERE SAYING, THIS IS WHAT WE NEED, HERE' S OUR
10 COSTS, THIS IS WHAT NORCAL HAS AGREED TO PAY US.

11 I THINK HE WAS TRYING TO GAIN AN UNDERSTANDING OF
12 HOW MUCH THE UNION WAS GOING TO BE NEGOTIATING FOR
13 SUBSEQUENT WAGE INCREASES OVER THE COMING YEARS SO THE CITY
14 COULD BUDGET FOR THAT, WHAT NORCAL' S ROLE WAS, IF ANY, IN
15 INFLUENCING ANY OF THOSE COSTS AND HOW MUCH, IF ANY, CWS WAS
16 WILLING TO BACK OFF ON ITS DEMANDS. AND ULTIMATELY I THINK
17 THE NUMBERS THAT WERE AGREED TO, JOE GUERRA BASICALLY SAID
18 IN THE END, THIS IS WHAT WE WILL GIVE YOU; IF IT WAS \$1.9
19 MILLION FOR THE FIRST YEAR, \$2.5 MILLION FOR THE SECOND
20 YEAR, I THINK 2.4 FOR THE THREE REMAINING YEARS OF THE
21 INITIAL FIVE YEARS. AND THOSE WERE ROUND NUMBERS; THEY WERE
22 NOT THE EXACT NUMBERS. THAT REPRESENTED OUR BEST GUESS AT

23 WHAT THE COSTS WERE GOING TO BE.

24 SO THE PROCESS WAS THAT JOE -- I WAS PRIVY TO SOME
25 OF THIS, WHEN I WAS IN THE ROOM WITH DAVID, AND JOE WAS KIND
26 OF WORKING US A LITTLE ON OUR COSTS.

27 Q. OKAY. SO HE WAS KIND OF ACTING AS SOME KIND OF
28 MEDIATOR, IF YOU WILL?

SUE HERFURTH, CSR #9645

1381

1 A. WELL, HE WAS MEDIATING HIS OWN INTERESTS, SO I'M
2 NOT SURE IF THAT'S THE RIGHT TERM. IT SEEMED LIKE HE WAS
3 TRYING TO BROKER SOME KIND OF UNDERSTANDING.

4 Q. LET'S GO WITH BROKER. HOW MANY WORKERS DID CWS
5 HAVE IN SAN JOSE THAT WERE SUBJECT TO THIS WAGE
6 DIFFERENTIAL?

7 A. WELL, IT WAS NEVER ONE NUMBER.

8 Q. WELL, CAN YOU GIVE A BALLPARK?

9 A. WELL, WHEN WE STARTED IN JULY, 2002, AND WE WERE
10 HAULING THE MATERIAL TO OAKLAND TO PROCESS BECAUSE
11 OUR -- WHEN WE STARTED IN JULY OF 2002 AND WE'RE HAULING THE
12 MATERIAL TO OAKLAND BECAUSE THE SAN JOSE FACILITY WAS NOT
13 COMPLETED, WE'RE EMPLOYING I THINK 32 TEAMSTERS WHO WERE
14 DISPLACED FROM WASTE MANAGEMENT, AND THEY CAME HAD TO WORK
15 AT THE TIMOTHY DRIVE FACILITY IN SAN JOSE, AND THEY CLEANED
16 UP AROUND CONSTRUCTION AND WE DID SOME TRAINING WITH THEM
17 AND GENERALLY TRIED TO KEEP THEM BUSY BECAUSE WE HAD AGREED
18 TO KEEP THEM EMPLOYED IRRESPECTIVE OF WHETHER OR NOT WE HAD
19 MATERIAL IN SAN JOSE FOR THEM TO PROCESS.

20 SO I BELIEVE IT WAS 32 AS WE -- STARTED PROCESSING

21 MATERIALS, STARTED COMING INTO SAN JOSE. WHEN THE FACILITY
22 WAS COMPLETED, WE ADDED WORKERS, AND I THINK THE NUMBER WAS
23 UP IN THE LOW TRIPLE DIGITS AT ONE TIME.

24 Q. YOU MEAN IN EXCESS OF A HUNDRED?

25 A. YES, AND AS LOW AS MAYBE THE LOW 60S AT ANOTHER
26 POINT, DEPENDING UPON HOW WE WERE PROCESSING, HOW MANY LINES
27 WE WERE RUNNING AND HOW MANY HOURS, WHAT WE WERE TRYING TO
28 ACCOMPLISH OPERATIONALLY.

SUE HERFURTH, CSR #9645

1382

1 Q. ONE OF THE THINGS YOU TOLD US ABOUT IN CONNECTION
2 WITH YOUR BACKGROUND AND WORK YOU DO WAS LOOKING AT NUMBERS,
3 CORRECT?

4 A. YES.

5 Q. CAN YOU TELL US WHY THE NUMBERS FOR THE
6 DIFFERENTIAL BETWEEN TEAMSTERS WAGE AND ILWU LOCAL 6 WAGES
7 TURNED OUT TO BE SO HIGH, IN THE MILLIONS OF DOLLARS?

8 A. (NO RESPONSE.)

9 Q. PER YEAR?

10 A. WELL, IT'S A COMBINATION OF THREE FACTORS. THE
11 FIRST IS HOURLY WAGE, WHICH FOR TEAMSTERS IS SUBSTANTIALLY
12 HIGHER THAN FOR THE LONGSHOREMEN.

13 Q. SO ARE WE TALKING ABOUT THREE OR FOUR DOLLARS AN
14 HOUR MORE?

15 A. UH -- AT THE TIME I THINK WE WERE TALKING ABOUT THE
16 DIFFERENCE BETWEEN 12-AND-A-HALF AND SEVEN.

17 Q. SO FIVE DOLLARS AN HOUR?

18 A. YES. SO --

- 19 Q. THAT'S ONE OF THE FACTORS.
- 20 A. THE NEXT FACTOR WAS BENEFIT LOAD. THE TEAMSTERS
21 WERE GETTING VERY GENEROUS; MEDICAL, DENTAL, VISION. I
22 BELIEVE THE PACKAGE FOR AN ENTIRE FAMILY, INCLUDING
23 DEPENDENT CARE, WHEREAS THE LONGSHOREMEN WERE RECEIVING A
24 MUCH MORE MODEST PACKAGE WHICH INCLUDED THE WORKER ONLY.
- 25 Q. THAT DIFFERENTIAL WAS WHAT?
- 26 A. COULD HAVE BEEN \$850 A MONTH.
- 27 Q. PER WORKER?
- 28 A. YEAH, JUST ON THE DIFFERENTIAL. I BELIEVE IT MAY

SUE HERFURTH, CSR #9645

1383

- 1 BE THAT HIGH NOW. AT THE TIME I THINK IT WAS 700 TO 750 A
2 MONTH PER WORKER.
- 3 AND THEN LASTLY IS THE COSTS THAT ARE DIRECTLY
4 LINKED TO PAYROLL BUT ARE NOT PAYROLL, WHICH INCLUDE TAX BUT
5 MORE IMPORTANTLY, WORKER'S COMPENSATION PREMIUMS.
- 6 Q. PAYROLL DRIVEN COSTS?
- 7 A. CORRECT.
- 8 Q. THOSE WOULD BE THINGS THAT ARE ADDED ON EXPENSES
9 THAT ARE DRIVEN BY THE SIZE OF THE PAYROLL?
- 10 A. PROPORTIONATE TO PAYROLL, YES.
- 11 Q. WORKER'S COMP?
- 12 A. THAT WAS HUGE, BECAUSE THE WORKER'S COMP PREMIUMS
13 WERE RUNNING IN THE 30S.
- 14 Q. EMPLOYER TAXES?
- 15 A. YES.
- 16 Q. THINGS LIKE THAT?

- 17 A. CORRECT.
- 18 Q. I GUESS THERE WERE SPREADSHEETS, NUMBERS PASSED
19 AROUND BETWEEN YOU AND CWS AND NORCAL AND JOE GUERRA AND
20 OTHER REPRESENTATIVES OF THE CITY?
- 21 A. THAT' S CORRECT.
- 22 Q. AND SOME AGREEMENT WAS REACHED AS TO WHAT THE
23 CORRECT NUMBER WAS?
- 24 A. THAT' S CORRECT.
- 25 Q. DO YOU RECALL ANY MEETINGS WITH COUNCILMEMBERS TO
26 ADDRESS THE ISSUE OF THE CITY PAYING NORCAL FOR CWS' S EXTRA
27 LABOR COSTS OR ADDENDUM COSTS?
- 28 A. (NO RESPONSE.)

SUE HERFURTH, CSR #9645

1384

- 1 Q. BY THE WAY, ADDENDUM COSTS, IS THAT THE TERM YOU
2 USED TO REFER TO THESE COSTS?
- 3 A. YES. LABOR ADDENDUM MONEY IS ADDENDUM COSTS.
- 4 Q. OKAY. SO YOU KNOW WHAT I' M TALKING ABOUT.
- 5 A. GENERALLY REFERRED TO AS LABOR COSTS.
- 6 Q. THE EXTRA COSTS INCURRED BY GOING TO THE TEAMSTERS
7 INSTEAD OF THE LONGSHOREMEN, CORRECT?
- 8 A. CORRECT.
- 9 Q. DID YOU EVER SPEAK TO ANY COUNCILMEMBERS ABOUT THAT
10 SUBJECT?
- 11 A. WELL, I WOULD REFER BACK TO MY CONFUSION EARLIER
12 ABOUT SUBJECTIVE MEETINGS WITH COUNCILMEMBERS. I WOULD SAY
13 I DON' T RECALL SPECIFICALLY HAVING CONVERSATIONS ABOUT THOSE
14 ADDENDUM MONIES WITH COUNCILMEMBERS, BUT I' M NOT CERTAIN IT

15 DIDN' T HAPPEN, EITHER.

16 Q. THIS WOULD HAVE HAPPENED WHEN, IF IT DID HAPPEN,
17 IN '03 AND AFTER?

18 A. AGAIN, I DON' T REMEMBER. I BELIEVE I TOLD YOU
19 BEFORE THAT I DIDN' T RECALL WHETHER IT WAS AFTER THE
20 EFFECTIVE DATE OF THE CONTRACT OR NOT.

21 Q. WELL, AGAIN, I WANT TO MAKE SURE THERE IS NO
22 CONFUSION. I' M NOT INTERESTED WITH MEETINGS WITH
23 COUNCI LMEMBERS ABOUT USE PERMIT ISSUES, SELECTING A SITE,
24 FINES, VIOLATIONS OF USE PERMITS, AND THOSE THINGS.

25 I' M ONLY INTERESTED IN MEETINGS WITH
26 COUNCI LMEMBERS WHERE DISCUSSIONS TOOK PLACE ABOUT GETTING
27 THE CITY TO PAY MORE MONEY TO PAY FOR THESE ADDITIONAL LABOR
28 COSTS.

SUE HERFURTH, CSR #9645

1385

1 DO YOU REMEMBER ANY SUCH MEETINGS? IF YOU DON' T,
2 YOU DON' T.

3 A. I DON' T REMEMBER ANY SUCH MEETINGS --

4 Q. OKAY.

5 A. LET ME OFFER YOU THIS AS WELL. EVEN THOUGH I DON' T
6 REMEMBER ANY SUCH MEETINGS, I DON' T REMEMBER WHEN I SAT IN
7 THE COUNCI L CHAMBERS AND HEARD COUNCI LMEMBERS SAY THEY WERE
8 SURPRISED TO LEARN ABOUT THIS FOUR YEARS AFTER THE FACT. I
9 DON' T REMEMBER SAYING TO MYSELF, BUT WAIT A MINUTE, I KNOW
10 THAT COUNCI LMEMBER DID BECAUSE I HEARD DAVID TELL HIM OR
11 HER.

12 SO I' M COMFORTABLE WITH THE FACT THAT WITH MY

13 STATEMENT -- I PROBABLY DON' T KNOW OF ANY SUCH
14 CONVERSATIONS.

15 Q. TO PUT IT ANOTHER WAY, YOU ATTENDED THE COUNCIL
16 MEETINGS IN LATE 2004 OVER THE AMENDMENT TO THE NORCAL
17 AGREEMENT?

18 A. THAT' S CORRECT.

19 Q. YOU HEARD MEMBERS OF THE COUNCIL EXPRESS COMMENTS
20 ABOUT NOT HAVING KNOWN ABOUT THIS EARLIER, CORRECT?

21 A. CORRECT.

22 Q. YOU HEARD THOSE COMMENTS AND YOU' RE TELLING US
23 NOTHING JUMPED OUT TO YOUR MIND ABOUT, GEE, I HAD A MEETING
24 WITH COUNCILMEMBER X, Y, OR Z. HOW COULD THEY BE SAYING
25 THIS?

26 A. THAT' S CORRECT.

27 Q. NOW, IN ANSWERING MY QUESTIONS ABOUT
28 COUNCILMEMBERS, DID YOU INCLUDE THE MAYOR AS A

SUE HERFURTH, CSR #9645

1386

1 COUNCILMEMBER, OR ARE YOU MAKING THE DISTINCTION BETWEEN THE
2 MAYOR AND COUNCIL?

3 A. I' M MAKING A DISTINCTION BETWEEN THE MAYOR AND
4 COUNCIL.

5 Q. DID YOU ATTEND ANY MEETINGS WITH THE MAYOR ABOUT
6 GETTING NORCAL ADDITIONAL MONEY FROM THE CITY?

7 A. NO, I NEVER ATTENDED ANY MEETINGS WITH THE MAYOR
8 ABOUT ANYTHING.

9 Q. THAT' S EASY.

10 A. ABOUT THAT I' M ABSOLUTELY CERTAIN.

11 Q. OKAY. JUST BEAR WITH US FOR A MOMENT.

12 MR. FINKELSTEIN: WE'RE GOING TO MARK EXHIBIT 103,
13 WHICH APPEARS TO BE AN E-MAIL FROM TONY ARREOLA TO PAUL
14 ROTTENBERG, DATED FRIDAY, SEPTEMBER 13, 2002, 9:36 A.M.
15 IT'S TWO PAGES.

16 THE FOREPERSON: SO MARKED.

17 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
18 JURY EXHIBIT 103.)
19 BY MR. FINKELSTEIN:

20 Q. COULD YOU LOOK EXHIBIT 103 AND TELL US WHAT THAT
21 IS?

22 A. (NO RESPONSE.)

23 Q. DO YOU RECOGNIZE THAT?

24 A. I DON'T REMEMBER HAVING SEEN IT. DOESN'T MEAN I
25 HAVEN'T; I JUST DON'T REMEMBER.

26 Q. YOU PRODUCED YOUR E-MAIL ON A CD; IS THAT RIGHT?

27 A. THAT'S CORRECT.

28 Q. AND ARE YOU -- AND ARE YOU THE PERSON WHO -- IS

SUE HERFURTH, CSR #9645

1387

1 THAT YOUR WRITING ON THE CD?

2 A. YES, IT IS.

3 Q. AND DO YOU HAVE YOUR COMPUTER WITH YOU?

4 A. I DO.

5 Q. DO YOU WANT TO LOOK AT THE CD AND SEE IF YOU CAN
6 VERIFY THE CD FOR US?

7 A. IT'S GOING TO TAKE ME SOME TIME TO READ THIS.
8 INSTEAD, I WILL SIMPLY LOOK AT THE DIRECTORY I USED TO

9 CREATE THIS AND READ IT OFF MY HARD DRIVE.
10 Q. OKAY.
11 A. YES, I HAVE IT. YES, I PRODUCED IT.
12 Q. JUST SO WE'RE CLEAR, YOU'VE NOW REVIEWED YOUR OWN
13 COMPUTER, A LAPTOP YOU BROUGHT TO THE GRAND JURY ROOM,
14 CORRECT?
15 A. CORRECT.
16 Q. YOU CAN VERIFY FOR US THAT EXHIBIT 103 IS AN
17 ACCURATE COPY OF AN E-MAIL THAT YOU RECEIVED FROM TONY
18 ARREOLA ON SEPTEMBER 13, 2002 AT 9:36 A.M. ?
19 A. CORRECT.
20 Q. OKAY.
21 A. CAN I ALSO ADD -- I'M SORRY. BEFORE LUNCH I GAVE
22 YOU THE NAME OF THE COMPANY THAT MIKE MAHONEY WORKS FOR. I
23 TOLD YOU IT WAS WASTE SOLUTIONS, INC. IT'S WASTE SOLUTIONS
24 GROUP.
25 Q. THANK YOU. NOW, NEAR THE TOP OF THE E-MAIL
26 MR. ARREOLA WRITES:
27 TEAM, FYI, CHUCK HAS ALREADY CONTACTED
28 CARL MOSHER AND ESD.

SUE HERFURTH, CSR #9645

1388

1 DO YOU SEE THAT?
2 A. YES.
3 Q. DO YOU KNOW WHO CHUCK IS THAT'S REFERENCED IN THE
4 E-MAIL?
5 A. CHUCK REED.
6 Q. ACCORDING TO CHUCK, CHUCK WILL HOST A MEETING WITH

7 ESD, NORCAL AND US SOMETIME IN THE NEXT WEEK TO DISCUSS THE
8 GARBAGE PROBLEM AND SET A PLAN OF ACTION TO CORRECT THE
9 PROBLEM.

10 CORRECT?

11 A. YES, IT SAYS THAT.

12 Q. AND THE GARBAGE PROBLEM HAS TO DO WITH TOO MUCH OR
13 EXCESSIVE CONTAMINATION OF RECYCLABLES?

14 A. CORRECT.

15 Q. THAT DOESN'T REFER ANYTHING TO GETTING ADDITIONAL
16 MONEY -- STRIKE THAT. THAT DOESN'T REFER TO ANY EFFORT TO
17 GET ADDITIONAL MONEY THROUGH CHUCK REED FROM THE CITY TO
18 NORCAL, CORRECT?

19 A. NOT THAT I SEE, THAT IS CORRECT.

20 Q. IN ADDITION:

21 CONFIDENTIALLY, JOE GUERRA, THE MAYOR'S
22 BUDGET DIRECTOR, HAS COMMITTED TO ME TO SUPPORT A
23 GARBAGE RATE INCREASE TO PAY FOR THE COST OF THE
24 EMPLOYER TEAMSTERS.

25 IS THAT WHAT IT READS?

26 A. YES.

27 Q. LET ME CAUTION THE JURORS THAT THIS IS HEARSAY.
28 WE'RE GOING TO HAVE TO POSSIBLY CALL OTHER WITNESSES TO LOOK

SUE HERFURTH, CSR #9645

1389

1 INTO THIS FURTHER.

2 IT GOES ON TO READ:

3 I'M HAVING DINNER WITH THE MAYOR TONIGHT AND
4 WILL DISCUSS THE MATTER WITH HIM ALSO TO ENSURE

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUCCESS.

CORRECT?

A. CORRECT.

Q. DID MR. ARREOLA EVER REPORT TO YOU THE RESULTS OF THESE MEETINGS WITH MR. GUERRA OR THE MAYOR ON THE ISSUE OF PROCURING A RATE HIKE TO PAY FOR CWS' S EXTRA LABOR COSTS?

A. IF HE DID, THEN I DON' T RECALL.

Q. OKAY. WERE YOU PRESENT AT ANY DISCUSSIONS THAT MAY HAVE TAKEN PLACE BETWEEN MR. ARREOLA AND JOE GUERRA OR THE MAYOR OR OTHER CITY OFFICIALS DISCUSSING THE RATE HIKE TO PAY FOR THE EXTRA LABOR COSTS?

A. ASIDE FROM THE ONE MEETING THAT I DESCRIBED TO YOU WHERE JOE GUERRA RAISED THE ISSUE, AND WHICH I SAID WAS THE FIRST TIME THAT WE HAD AN UNDERSTANDING THAT NORCAL WAS GOING TO GET A RATE INCREASE, TO GET IT THROUGH THE COUNCIL, TO GET IT PAID. THEREFORE, WE WERE GOING TO END UP HAVING TO WAIT FOR THAT OR TO INITIATE LITIGATION AGAINST NORCAL. NO.

Q. OKAY. NOW THAT YOU' VE SEEN THE E-MAIL AND THE DATE OF THIS E-MAIL, DO YOU HAVE ANY BETTER UNDERSTANDING OR RECOLLECTION OF WHEN THIS MEETING TOOK PLACE THAT YOU TOLD US ABOUT?

A. THE MEETING I JUST REFERRED TO?

Q. YES.

SUE HERFURTH, CSR #9645

1390

1
2

A. WITH NORCAL AND CWS AND JOE GUERRA AND JULIE AND SO FORTH?

3 Q. YES.

4 A. NO, I'M NOT SURE THAT THIS NECESSARILY HELPS ME
5 PLACE THE TIME EXCEPT, YOU KNOW, I CONTINUE TO BELIEVE THAT
6 WHEN I SAID I HAD NOT HEARD OF A RATE INCREASE BEING
7 SOMETHING THAT WE NEEDED IN ORDER TO GET PAID, IT WAS THE
8 FIRST TIME.

9 THIS DOESN'T APPEAR TO SUGGEST THAT CWS WOULDN'T
10 GET PAID WITHOUT A RATE INCREASE, BUT RATHER THAT WOULD HELP
11 NORCAL GET PAID, BECAUSE WE'RE ALL KIND OF IN THIS TOGETHER.
12 AND NO, CWS AND NORCAL WERE NEVER THE BEST OF FRIENDS.

13 I'M NOT SURE, I WOULDN'T WANT TO SAY NECESSARILY
14 THAT THE MEETING WITH JOE GUERRA CAME AFTER THIS, BUT IT
15 SEEMS REASONABLE TO SUGGEST THAT IT MIGHT.

16 Q. SO WHAT'S YOUR BEST RECOLLECTION; WAS THE MEETING
17 BEFORE OR AFTER THIS E-MAIL?

18 A. I CONTINUE TO NOT KNOW.

19 Q. OKAY.

20 MR. FINKELSTEIN: WE HAVE AN E-MAIL CHAIN WE'RE
21 GOING TO MARK AS EXHIBIT 104. THE BOTTOM OF THE CHAIN
22 APPEARS TO BE AN E-MAIL FROM SEAN KALI-RAI TO PAUL
23 ROTTENBERG DATED MONDAY, OCTOBER 14, 2002 AT 1:38 P.M.
24 ABOVE THAT APPEARS TO BE A REPLY FROM PAUL ROTTENBERG TO
25 SEAN KALI-RAI DATED THE SAME DAY, OCTOBER 14, 2002 AT 1:59
26 P.M.

27 THE FOREMAN: SO MARKED.

28 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND

SUE HERFURTH, CSR #9645

1 JURY EXHIBIT 104.)

2 MR. FINKELSTEIN: I WILL PUT IT UP ON THE SCREEN
3 AND ASK YOU TO VERIFY THIS E-MAIL FOR US FROM YOUR
4 COMPUTER.

5 A. WHAT IF I RECOGNIZE IT?

6 Q. IF YOU RECOGNIZE IT, THAT'S FINE. LET ME START
7 WITH THE BOTTOM OF THE CHAIN. DO YOU RECOGNIZE THIS E-MAIL?

8 A. YES, I DO.

9 Q. OKAY. AND SO COULD YOU TELL US WHAT THIS E-MAIL
10 CHAIN IS, STARTING MAYBE AT THE BOTTOM AND GOING UP?

11 A. WELL, MY PART ADDRESSED TO SEAN IS A RESPONSE TO
12 HIS REQUEST, I'M SURE, OR DAVID'S REQUEST THAT I WRITE HIM
13 ON WHAT I'M TRYING TO DO TO SUPPORT THIS PROCESS.

14 Q. OKAY.

15 A. SO I'M JUST EXPLAINING THAT I'M TRYING TO FIGURE
16 OUT HOW MUCH MONEY NORCAL OWES US, AND IT'S A DIFFICULT
17 PROCESS, AND THERE'S A BACKWARD LOOKING COMPONENT AND A
18 FORWARD LOOKING COMPONENT, AND IT'S NOT GOING TO BE
19 SOMETHING THAT COULD BE SIMPLY BOILED DOWN TO ONE NUMBER.

20 Q. ABOVE THAT WE HAVE A REPLY ON OCTOBER 14, 2002 AT
21 1:38 P.M. FROM SEAN KALI-RAI?

22 A. I GUESS.

23 Q. ABOVE THAT WE HAVE YOUR RESPONSE ON OCTOBER 14,
24 2002 AT 1:59 P.M., CORRECT?

25 A. CORRECT, ALTHOUGH I'M MISSING A LITTLE CONTEXT
26 BECAUSE IT LOOKS LIKE I WAS RESPONDING TO CHRISTINA FOR SOME
27 REASON.

28 Q. LET ME ASK YOU ABOUT SOMETHING IN THE CHAIN HERE.

SUE HERFURTH, CSR #9645

1 THERE IS A LINE FROM THE E-MAIL FROM SEAN KALI -RAI THAT
2 SAYS:

3 CHUCK REED IS PUSHING, AND HE WILL BE HARD TO
4 HOLD BACK.

5 WHAT DOES THAT REFER TO?

6 A. UH -- I RECALL THAT CHUCK REED WAS MADE AWARE, I
7 BELIEVE, THAT SEAN KALI -RAI AND TONY ARREOLA HAD SOME ACCESS
8 TO CHUCK REED AND WERE TALKING TO HIM ABOUT THE PROBLEMS AT
9 CWS RELATIVE TO THE GARBAGE.

10 Q. ARE WE TALKING ABOUT THE GARBAGE PROBLEM OR THE
11 EXTRA MONEY PROBLEM, OR DO YOU KNOW?

12 A. I DON' T REMEMBER BEING AWARE THAT CHUCK REED WAS
13 INVOLVED IN THE MONEY ISSUE. SO I' M ASSUMING, EVEN THOUGH
14 IT SEEMS A LITTLE BIT OUT OF CONTEXT, BECAUSE IN THE MEETING
15 REED IS TALKING ABOUT MONEY. I DON' T THINK I WAS AWARE THAT
16 CHUCK REED WAS INVOLVED IN THE MONEY ISSUE, BUT I KNOW THAT
17 CHUCK REED WAS AWARE OF THE GARBAGE ISSUE, AND FROM WHAT I
18 HAD HEARD, WAS EMPATHETIC ABOUT IT, WAS PRESUMABLY TALKING
19 TO NORCAL AND ESD ABOUT THE ISSUE, AND HAD BEEN QUOTED AS
20 SAYING, GARBAGE IN, GARBAGE OUT, WHICH WAS BASICALLY A
21 DEFENSE OF CWS, WHICH IS THAT WE' RE GETTING A LOT OF BAD
22 MATERIAL AND WE CAN' T TURN IT INTO GOOD MATERIAL.

23 Q. SO THE REFERENCE IN THE TOP E-MAIL ABOUT YOUR
24 UNDERSTANDING FROM CHRISTINA, THAT WOULD BE CHRISTINA DUONG?

25 A. YES, DAVID' S SISTER.

26 Q. AND THE REFERENCE TO CHUCK ASKING ABOUT THE DATA
27 AND THE NUMBERS, IS THAT DATA AND NUMBERS ABOUT THE
28 CONTAMINATION OF RECYCLABLES, OR IS THAT DATA AND NUMBERS

1 ABOUT PAYING WAGE AND BENEFIT DIFFERENTIALS BETWEEN
2 TEAMSTERS AND LONGSHOREMEN?

3 A. I HAVE NO IDEA.

4 Q. THAT'S YOUR E-MAIL.

5 A. I KNOW. IT'S A FEW YEARS OLD.

6 Q. BUT IT'S YOUR E-MAIL.

7 A. YES.

8 Q. YOU WROTE IT?

9 A. IT SEEMS SO, YES.

10 Q. IS THERE A DOUBT ABOUT THAT, BECAUSE YOU CAN CHECK
11 YOUR COMPUTER.

12 A. NO. I'M SURE I PRODUCED IT AND I'M SURE I WROTE
13 IT, BUT I CAN'T TELL YOU WHAT I'M REFERRING TO.

14 Q. SO YOUR BEST RECOLLECTION IS THAT COUNCILMEMBER
15 REED WAS NOT ADVISED BY ANYONE TO YOUR KNOWLEDGE ABOUT THIS
16 EXTRA MONEY FOR NORCAL AND THAT WOULD FILTER DOWN TO CWS,
17 CORRECT?

18 A. IT IS CORRECT THAT I DON'T RECALL THAT.

19 Q. YOU HAVE NO RECOLLECTION OF COUNCILMEMBER REED
20 BEING ADVISED OF ANYTHING ABOUT EXTRA MONEY FOR NORCAL SO
21 THAT NORCAL COULD PAY CWS FOR THE EXTRA LABOR COSTS,
22 CORRECT?

23 A. THAT'S CORRECT.

24 MR. FINKELSTEIN: LET ME SEE IF THE JURORS HAVE
25 ANY QUESTIONS.

26 A COUPLE OF CLARIFICATIONS ON THE WAGE AND BENEFIT
27 DIFFERENTIAL BETWEEN TEAMSTERS AND LONGSHOREMEN. THIS 750
28 TO 850 PER MONTH PER EMPLOYEE, IS THAT THE AMOUNT OR THE

SUE HERFURTH, CSR #9645

1394

1 DIFFERENCE IN THE BENEFITS?

2 THE WITNESS: UH -- IT'S BOTH, BECAUSE THE
3 LONGSHOREMEN BENEFITS IS FAIRLY LOW. I THINK THE ENTIRE
4 PACKAGE COSTS US ABOUT \$150.

5 Q. HOLD ON A MINUTE. YOU UNDERSTAND THE DIFFERENCE
6 BETWEEN THE AMOUNT -- DID YOU UNDERSTAND MY QUESTION?

7 A. YES, I DID.

8 Q. YOU THREW OUT A FIGURE OF 750 TO 850 PER MONTH PER
9 EMPLOYEE RELATED TO BENEFIT COSTS, CORRECT?

10 A. CORRECT.

11 Q. THAT WAS THE NUMBER, THE DIFFERENTIAL BETWEEN
12 LONGSHOREMEN AND EMPLOYEES, OR THAT WAS JUST THE
13 LONGSHOREMEN COST, I MEAN THE TEAMSTER COST?

14 A. AND THE ANSWER THAT I'M TRYING TO GIVE IS THAT THE
15 TEAMSTER BENEFIT RATE WENT UP DEMONSTRABLY, SO IT WAS
16 PROBABLY ABOUT A \$650 OR ABOUT A \$750 TEAMSTER COST WHEN WE
17 STARTED THE CONTRACT, BUT SHORTLY THEREAFTER WE WERE
18 NOTIFIED THAT THE NUMBER WENT UP TO \$900 VERSUS THE \$150 WE
19 WERE PAYING LONGSHOREMEN.

20 Q. SO THAT WAS NOT A DIFFERENTIAL; IT WAS A COST.

21 A. UM -- I BELIEVE THAT THE DIFFERENTIAL HAS BEEN AS
22 HIGH AS \$750, WHERE WE WERE PAYING THE TEAMSTERS \$900 A
23 MONTH IN HEALTH AND WELFARE, WHICH DID NOT INCLUDE ACTUALLY
24 THE PENSION CONTRIBUTION. AND WE WERE ONLY PAYING THE
25 LONGSHOREMEN A PACKAGE ROUGHLY OF \$150 DOLLARS.

26 Q. SO \$150 COMPARED TO \$750 WOULD BE A \$600

27 DIFFERENTIAL PER EMPLOYEE PER MONTH ON THE LOW END?

28 A. CORRECT. \$750 ON THE HIGH END.

SUE HERFURTH, CSR #9645

1395

1 Q. OKAY.

2 A. DOES THAT MAKE SENSE?

3 Q. YES. I THINK THAT ANSWERS THE QUESTION.

4 AND THESE PAYROLL DRIVEN COSTS, THAT WOULD INCLUDE
5 THINGS LIKE SOCIAL SECURITY, RIGHT?

6 A. CORRECT.

7 Q. WHICH GOES UP SUBJECT TO A CAP BASED ON THE
8 WORKER'S SALARY, CORRECT?

9 A. CORRECT.

10 Q. SOMETHING LIKE WHAT, 6.23 PERCENT, SOMETHING LIKE
11 THAT?

12 A. SOMETHING LIKE THAT; IT'S CLOSE.

13 Q. THEN THE WORKER'S COMP IS A PERCENTAGE OF THE
14 SALARY?

15 A. CORRECT.

16 Q. DO YOU REMEMBER WHAT PERCENTAGE THAT WAS?

17 A. MOVED AROUND, THERE WAS A WORKER'S COMP CRISIS IN
18 ROUGHLY 2002 THAT DROVE OUR COSTS FROM I THINK THE TEENS UP
19 INTO THE 30S.

20 Q. THAT'S PERCENT?

21 A. YES.

22 Q. SO IF -- THEN THERE WAS MEDICARE, RIGHT?

23 A. CORRECT.

24 Q. AND PENSION COSTS. SO WAS CWS OFFERING A PENSION

25 OR WAS IT A DEFINED CONTRIBUTION FUND?

26 A. THE LONGSHOREMEN HAD A PENSION, A SEPARATE PENSION,
27 AND THE TEAMSTERS HAVE A -- ACTUALLY, I DON'T REMEMBER.

28 Q. ANYWAY, TYPICALLY IN PENSION PLANS THE EMPLOYER'S

SUE HERFURTH, CSR #9645

1396

1 CONTRIBUTION IS A PERCENTAGE OF THE SALARY, RIGHT?

2 A. I'VE SEEN IT BOTH WAYS, DOLLAR AMOUNT PER HOUR.
3 FOR EXAMPLE, IN OAKLAND WE PAY A CERTAIN NUMBER OF DOLLARS
4 PER HOUR.

5 Q. REGARDLESS OF THE SALARY?

6 A. CORRECT. SO THE PENSION TIME GOES UP WHEN THE
7 SALARY GOES UP. IN OTHER CASES IT DOESN'T. SOMETIMES WE
8 OFFER A WAGE INCREASE AND WORKERS WANT IT ON WAGES RATHER
9 THAN PENSION.

10 Q. OKAY.

11 MR. FINKELSTEIN: ONE OF THE JURORS HAS A QUESTION
12 ABOUT THE NUMBERS, THE 1.9 MILLION DOLLARS, FOR EXAMPLE.
13 AND I GUESS THE QUESTION IS, THE JUROR IS HAVING, APPEARS TO
14 BE HAVING A HARD TIME UNDERSTANDING HOW THE DIFFERENTIAL IN
15 COSTS THAT YOU'VE OUTLINED FOR US AT LEAST IN GENERAL COULD
16 ADD UP TO 1.9 MILLION DOLLARS IN THE FIRST YEAR.

17 IS THERE ANYTHING YOU CAN SAY TO SHED SOME
18 ADDITIONAL LIGHT ON THAT? I GUESS THE JUROR MAY BE
19 QUESTIONING WHETHER OR NOT THAT NUMBER IS ACCURATE OR
20 WHETHER OR NOT IT'S TOO HIGH. YOU WORKED ON THE NUMBERS,
21 RIGHT?

22 A. YES, I DID.

23 Q. HOW DID 50, 75 OR 100 WORKERS' DIFFERENTIAL WORK
24 OUT TO 1.9 MILLION DOLLARS?

25 A. WELL, I GUESS WE COULD DO THE MATH AND I COULD GET
26 OUT THE CALCULATOR.

27 Q. I'M TRYING TO AVOID THAT.

28 A. I APPRECIATE THAT VERY MUCH. THANK YOU. BECAUSE

SUE HERFURTH, CSR #9645

1397

1 THE WAGE DIFFERENTIAL WAS ROUGHLY 100 PERCENT OR CLOSE TO IT
2 OF THE WAGE OF A LONGSHOREMAN; WE HAD A NUMBER OF ISSUES.
3 OUR CONTRACT REQUIRED US TO PAY TWO HOURS OVERTIME EVERY
4 DAY, SO WHERE WE LIKELY WOULD HAVE HIRED ADDITIONAL
5 LONGSHOREMEN, WE ENDED UP HAVING TO PAY OVERTIME INSTEAD.
6 SO THAT INCREASED THE WAGES AS WELL.

7 Q. OVERTIME IS COMPENSATED AT A HIGHER RATE?

8 A. TIME AND A HALF. IN GENERAL, IF YOU TOOK A HUNDRED
9 WORKERS AND FIGURED YOU WERE PAYING THEM A WAGE AND BENEFIT
10 PACKAGE, THE LONGSHOREMEN, THAT WAS SAY ROUGHLY THIRTEEN
11 DOLLARS AN HOUR. IT WAS ROUGHLY TWICE THAT, OR \$26 AN HOUR
12 FOR THE TEAMSTERS.

13 AND IF YOU JUST MULTIPLY ALL THAT OUT, IT BECOMES
14 A STAGGERING LARGE NUMBER FAIRLY QUICKLY. AND WE WORKED
15 VERY CLOSELY WITH NORCAL, WHO WAS ON THE HOOK TO PAY US
16 BECAUSE OF THE LABOR ADDENDUM, IRRESPECTIVE OF WHETHER OR
17 NOT THEY GOT PAID BY THE CITY. AND THEY AUDITED OUR PAYROLL
18 RECORDS VERY, VERY CLOSELY BECAUSE THEY HAD TO PAY US
19 EVERYTHING THAT WE PAID, AND THEY HAD PAID US EVERYTHING
20 THAT WE PAID. SO THEY AUDITED OUR RECORDS AND WE AUDITED

21 OUR RECORDS, AND THE CITY SENT THE CITY AUDITOR IN TO CWS TO
22 AUDIT CWS' S PAYROLL RECORDS PRIOR TO THE HEARING, THE
23 COUNCIL HEARING AT WHICH THE RATE INCREASE WAS HEARD AND
24 APPROVED.

25 SO I GUESS I WOULD OFFER, BY WAY OF HOPING TO
26 AVOID DOING THE MATH HERE, THAT NORCAL AUDITED US AND THE
27 CITY AUDITOR AUDITED US AND WE AUDITED US, AND INDEED THE
28 NUMBERS ARE THAT BIG. IT'S SHOCKING. I DON'T KNOW THAT

SUE HERFURTH, CSR #9645

1398

1 ANYBODY EXPECTED IT TO BE THAT BIG WHEN WE STARTED, BUT THE
2 COSTS ARE VERY HIGH.

3 MR. FINKELSTEIN: OKAY. ALL RIGHT. I THINK
4 THAT'S ALL THE QUESTIONS WE HAVE TODAY. SO YOU'RE FREE TO
5 GO AT THIS TIME, BUT YOU'RE STILL SUBJECT TO BEING RECALLED.
6 YOU'RE NOT EXCUSED FROM GIVING FURTHER TESTIMONY, WHICH IF
7 WE NEED YOU, WE'LL LET YOUR ATTORNEY KNOW WHEN YOUR PRESENCE
8 IS REQUIRED.

9 DO YOU UNDERSTAND THAT?

10 THE WITNESS: YES, I DO.

11 MR. FINKELSTEIN: ARE THERE ANY QUESTIONS? THE
12 FOREPERSON IS GOING REMIND YOU OF THE ADMONITION.

13 THE FOREPERSON: I READ THE ENTIRE ADMONITION TO
14 YOU. BASICALLY, IT SAID THAT YOU ARE NOT TO COMMUNICATE
15 WITH ANYBODY ANYTHING WHICH YOU HEARD, SAID, OR SAW DURING
16 THIS PROCEEDING UNTIL THE TRANSCRIPT IS RELEASED BY THE
17 COURT.

18 THE WITNESS: YES.

19 THE FOREPERSON: DO YOU UNDERSTAND THAT?

20 THE WITNESS: YES, I DO.

21 MR. FINKELSTEIN: THANK YOU VERY MUCH.

22 THE FOREPERSON: ARE WE READY TO ADJOURN UNTIL

23 TOMORROW MORNING AT 10:00 CLOCK?

24 MR. FINKELSTEIN: WE ARE, AND I AM VERY OPTIMISTIC

25 THAT WE WILL BE ABLE TO RECESS BEFORE 3:00 O' CLOCK.

26 CAUTIOUSLY OPTIMISTIC.

27 THE FOREPERSON: I'M SURE THAT'S A DISAPPOINTMENT

28 TO THE MEMBERS OF THE JURY.

SUE HERFURTH, CSR #9645

1399

1 WE CAN GO OFF THE RECORD AT THIS POINT. LET'S

2 ADJOURN THIS SESSION.

3 (COURT WAS ADJOURNED FOR THE DAY.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17
18
19
20
21
22
23
24
25
26
27
28

SUE HERFURTH, CSR #9645

1400

1
2
3
4
5
6
7
8
9
10
11
12
13

REPORTER'S CERTIFICATE

I, SUE HERFURTH, DO HEREBY CERTIFY THAT THE FOREGOING IS A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HAD IN THE WITHIN-ENTITLED ACTION HELD ON THE 12TH AND 13TH DAYS OF APRIL, 2006.

THAT I REPORTED THE SAME IN STENOTYPE, BEING THE QUALIFIED AND ACTING OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, APPOINTED TO SAID COURT, AND THEREAFTER THE SAME WAS TRANSCRIBED BY COMPUTER UNDER MY DIRECTION AS HEREIN

14 APPEARS.

15

16 I HAVE ADHERED TO CIVIL CODE OF PROCEDURE SECTION
17 237(1)(2), SIXTH DISTRICT COURT OF APPEAL MISCELLANEOUS
18 ORDER 96-02, BY SEALING THROUGH REDACTION OF ALL REFERENCES,
19 IF ANY, TO JUROR-IDENTIFYING INFORMATION, INCLUDING BUT NOT
20 LIMITED TO NAMES, ADDRESSES AND TELEPHONE NUMBERS.

21

22 DATED THIS 27TH DAY OF JUNE, 2006.

23

24

25

SUE HERFURTH, C. S. R.
CERTIFICATE NO. 9645

26

27

28

SUE HERFURTH, CSR #9645